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THEFT, PILFERAGE, NONDELIVERY, BREAKAGE, ETC., OF EXPORT AND IMPORT SHIPMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON MARINE INSURANCE OF THE COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FIRST SESSION

JULY 18, 19, AND 20, 1921

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SIXTY-SEVENTH CONGRESS.

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Dr. S. S. HUEBNER, expert in insurance to the United States Shipping Board and the Committee on the Merchant Marine and Fisheries.

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THEFT, PILFERAGE, NONDELIVERY, BREAKAGE, ETC., OF EXPORT AND IMPORT SHIPMENTS.

SUBCOMMITTEE OF THE COMMITTEE ON THE
MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, Monday, July 18, 1921.

The subcommittee met at 10 o'clock a. m., Hon. Frederick R. Lehlbach (chairman) presiding.

Mr. LEHLBACH. The reason this committee determined to hold this hearing and issued the invitation that it did, is as follows: Judging from representations made to this committee, losses through theft, pilferage, breakage, and other damage, and nondelivery have reached abnormal proportions in American commerce within recent years. Such losses, moreover, seem to be increasing rather than diminishing. It is alleged that with respect to certain of our foreign markets, insurance rates for this type of hazard have increased until they exceed those charged for all of the ordinary marine risks combined; that during the past 12 months such rates have increased from 100 to 300 per cent and even more, depending upon the market under consideration; that the problem is not confined to a limited number of our foreign markets, but extends to practically every foreign market to which our goods are sent; that various important insurance companies, despite the high rates, have already withdrawn from this field of insurance as regards certain important markets and that others are contemplating similar action in the near future unless conditions improve; and that many, if not most underwriters, when accepting the theft, breakage, and nondelivery hazard, agree to pay not more than 75 per cent of any claim, the merchant being obliged to assume the balance of the loss. Complaint has been made to the effect that there has been a distinct tendency on the part of water carriers, during the last few years, to assume only a nominal liability for negligence under their bills of lading, and at times to expressly exempt themselves from all liability for theft, breakage, and nondelivery.

Present conditions, if the allegations referred to are correct, would seem to indicate the existence of an intolerable economic waste which calls for united effort toward correction at the earliest possible date. It is the purpose of these hearings to bring out the facts with respect to (1) the approximate extent of loss through theft, breakage, and nondelivery; (2) the bearing of such loss upon this country's position in the world's competitive markets; (3) the causes of such loss, and (4) the remedy, or combination of remedies, best adapted to serve as a solution of the difficulty.

To a large extent the question is world-wide. But our leading competitors, it seems, have already undertaken to investigate the subject and to eliminate the causes of the trouble. It seems clear that we should keep pace with our competitors in working out a solution. The nation that effects a substantial improvement is likely to be at a decided advantage in foreign markets as compared with countries which neglect the matter and continue to operate under present conditions of waste. The problem is strategically associated with the development of our foreign trade opportunities and the maintenance of an American merchant marine. But even ignoring the vital element of foreign competition, it is clear that such waste should not be tolerated longer than is absolutely necessary.

The committee desires to hear all sides of this question. It has therefore expressed a desire to have the several interested groups—underwriters, shippers, and ship operators, through their representatives—give their statement of facts and their recommendations as to the most practicable manner of dealing with the problem. The committee felt that it would be advisable to have the several interested groups present their respective cases separately, the underwriters appearing first, next the shippers, and then the ship operators. It is the desire of the committee to hear every group fully. The method of procedure indicated was simply adopted in the interest of clearness and economy of time.

I would say, further, on behalf of the committee that there are a large number of witnesses who have expressed their willingness to be present, to testify to the facts, and to express their opinions. We have only a limited time in which to conduct this hearing. This hearing must close on Wednesday. In order that all may have full opportunity to be heard, in the interest of expedition and in the interest of orderly procedure, witnesses will not be questioned nor will their testimony be commented on by other witnesses or spectators who may be present. Criticism or questioning witnesses will be strictly reserved to the members of the committee themselves. Should any statement of fact be made, or an opinion or view expressed, which does not accord with the views of others who are present, they, in their own time, will have full opportunity either to contradict an alleged fact or dissent from the opinions expressed, but they may not interrupt witnesses on the stand.

The first witness to be heard will be Mr. Rush. Before you proceed with your statement, Mr. Rush, will you state, fully, your occupation and your connections with whatever interests may be concerned in this examination.

STATEMENT OF MR. BENJAMIN RUSH, PHILADELPHIA, PA., PRESIDENT OF THE INSURANCE CO. OF NORTH AMERICA.

Mr. Rush. My name is Benjamin Rush. I reside in Philadelphia. I am president of the Insurance Co. of North America. I am also chairman of the American Marine Insurance Syndicates of New York.

Mr. Chairman and gentlemen of the committte, I have prepared a paper here, thinking it would save your time and my own if I had it ready to file at the proper moment. With your permission, I would like to read it now.

Although I appear before you this morning as a representative of a marine insurance company, I want to emphasize the fact that the question we are considering, namely, the heavy drain on commerce which now exists owing to the prevalence of losses due to theft, pilferage, breakage, and nondelivery of goods intrusted to common carriers both by land and sea for transport either within the United States or between the United States and foreign countries, is only incidentally an insurance matter.

It should be considered as a matter which affects all merchants and shippers of goods in the United States and through them every purchaser and user of goods and commodities in the country.

The position which the insurance companies hold in reference to these losses is merely that they are, so to speak, on the firing line—they are the people to whom claims for these losses come, and they are therefore the people who are competent to testify as to the nature and cause of these losses; their extent so far as their own individual experience shows and as to the methods which should be adopted to do away with them.

Speaking now as president of the Insurance Co. of North America, I would like first and foremost to call your attention to the growth and increase of losses due to theft and pilferage as shown by the records of this company. I would call your attention to the following statement, which applies to marine cargoes over a five-year period. By marine cargoes I mean merchandise of all sorts and description shipped to and from the United States primarily by steamer or motor vessel.

The statement shows that in 1916 the net losses paid by this company for theft and pilferage were $35,574.29, or a theft loss percentage to premium of 3.8 per cent. In 1917 it was $78,064; percentage of loss, 6 per cent. In 1918 it was $108,839, again a percentage of loss of 6 per cent. In 1919 it was $332,041; percentage of loss of 15 per cent. In 1920 it was $1,027,414; percentage of loss, 27 per cent. And for the first four months of the present year it was $411,348; percentage of loss of 41 per cent.

(The statement in full is as follows:)

Marine cargoes for five years.

	Net premium.	Net losses.	Per cent.	Net theft losses.	Theft loss to premium.	Theft loss to entire loss.
					Per cent.	*Per cent.*
1916	$1,139,663.99	$1,068,599.04	95	$35,574.29	3.3	3.0
1917	1,324,926.35	1,177,235.62	90	78,064.53	6.0	6.8
1918	1,830,344.39	1,159,546.82	63	108,839 19	6.0	8.5
1919	2,160,437.50	1,417,758.69	65	332,041.43	15 0	27.0
1920	3,829,382.97	3,640,301.44	96	1,027,414.20	27.0	28.0
1921 (first 4 months)	996,623.15	955,455.31	93	411,348.27	41.0	43.0

The above figures do not include automobile, cotton, inland marine, lake, hull, war.

NOTE.—The "theft losses" are already included in the "net loss" figures. Net premiums are gross less returns and commissions. Net losses are gross less salvages.

The exclusion from these figures of automobile, cotton, inland marine, etc., does not imply that there are no theft losses on these classes of insurance. There are plenty of them. The above figures are intended to show the increase in ratio of theft losses on ocean-going general merchandise of all kinds other than cotton. Of course, many of these kinds of merchandise such as iron ore, pig iron, hemp, jute, etc., have comparatively small theft losses which would of course increase the percentages on the remaining classes of merchandise.

Mr. RUSH. I shall speak later regarding the losses as shown by our experience on business shipped principally by rail within the confines of the United States.

I desire to call to your attention the increasing amount of these losses from year to year, and particularly the increasing percentage, and to ask the question, If last year one insurance company paid losses by theft and pilferage amounting to over $1,000.000, how much was the loss paid by all insurance companies, and how much was the total loss from various causes sustained by everybody?

It certainly runs into many millions of dollars, and constitutes a heavy drain on the fabric of our economic situation.

As a rough index of how these heavy losses have been reflected in the increased rates charged by insurance companies to their policy holders, I beg to make the following statement:

Not many years ago the loss by theft was comparatively slight, so much so that 10 or 12 years ago it was included in marine insurance policies for a nominal premium, practically thrown in for nothing, so to speak.

Thus, 10 years ago this company was able to insure general merchandise against theft and pilferage to and from the United States and the United Kingdom by first-class line steamers at a rate of, say, 2½ cents; to-day our rate is 12½ cents for the kinds of merchandise least subject to theft and pilferage, and from there it runs up on merchandise shipped under what is known as the "released bill of lading" as high as 2 per cent, while under a full bill of lading the rate for the first group of merchandise would be 5 cents, and for the highest rated group of merchandise, 40 cents.

I submit a statement of rates herewith to cover losses caused by theft and pilferage, which were those charged by this company in March last, in reference to which I would say that since that date we have practically declined to insure against theft and pilferage on goods going to Latin America, by which I mean from the Mexican border to Cape Horn, including Cuba, San Domingo, Hayti, and certain other islands in the West Indies.

The statement also shows our classification of goods based on our experience of the theft and pilferage hazard. Thus class 4, beginning "Embroideries, hosiery, ribbons, leather," etc., is the class which we think is stolen most freely and readily, and so on down to class 1, which would include such articles as iron ore, steel rails, fireproof safes, bales of cotton, and other articles which thieves generally find it hard to get away with, although, as a matter of fact, they are stealing pig iron and steel rails in some South American ports at present.

One glance at this schedule will, I think, indicate to your committee the very heavy drain, which is imposed on commerce, which is called upon to pay such rates, and of the extreme necessity and urgency of the adoption of methods which will enable insurance companies to reduce them to the nominal rates which prevailed comparatively recently.

I would also like to state that even at the high rates which are charged this company has not made a profit on its theft insurance, and was obliged, as stated above, to retire from theft insurance to all Latin-American countries on account of the heavy claims which it was called upon to pay.

One more word of explanation, the letter "R" at the head of the column stands for "released bill of lading," while the letter "F" stands for "full bill of lading."

A released bill of lading is one in which the liability of the carrier has been limited by virtue of an agreement with the shipper, and a full bill of lading is one in which the carrier assumes full legal responsibility for the goods which he carries.

The mere money extent of the loss and its drain on commerce is bad enough, but the moral effect on those who are engaged in commerce and in the transportation of the property of others is still worse.

Theft and pilferage are now considered to be a just and proper perquisite by some of the employees of common carriers, longshoremen, customhouse employees, and others in Latin-American countries, who come in contact with the transportation of goods.

The thieves, I am pretty sure, are thoroughly organized.

A few illustrations may be of interest to the committee:

I am informed that not so very long ago the New York & Cuba Mail Steamship Co., in a very laudable attempt to reduce losses due to them and nondelivery on merchandise intrusted to their care for transportation between the United States and Cuba, stationed their officers in every hatch and gangway to supervise the unloading of cargoes in Cuban ports and to search any longshoremen who appeared to be attempting to convert cargoes by Ward Line vessels to his own use.

Within 24 hours they were advised by a representative of the longshoremen in Cuba that unless this supervision was removed and the longshoremen were allowed to have free and unsupervised access to the cargoes which they were unloading a strike would be called against the New York & Cuba Mail Steamship Co.

Another instance is submitted herewith:

A prominent firm of shoe manufacturers in New England were thoroughly alarmed by the increase in theft and pilferage on their shoes, which were exported principally to Europe.

The claims continued to increase in frequency and amount, and their rates of premium increased in mathematical ratio. Every kind of method was taken to increase the security of the packages in which their shoes were shipped, with absolutely no result. The thefts steadily continued. Finally the firm decided that they would ship all their right-hand shoes on one vessel and their left-hand shoes on another and subsequent vessel. This stopped the thefts for just about long enough for information to be sent from the other side back to the United States, whereupon the thefts again recommenced, clearly indicating that the thieves on the other side had some kind of an arrangement whereby they could steal left-hand shoes from one vessel and right-hand shoes from another vessel and put them together again with sufficient accuracy to sell them or otherwise dispose of them in a foreign market. As a matter of fact, it is extremely difficult at the present time to insure boots and shoes with any insurance company except at prohibitive rates, and thus a large and important domestic industry is threatened with extinction unless means be found of arresting and punishing the thieves who are preying on this business.

That a good proportion of this theft is controllable is indicated by the following fact:

A prominent official of a steamship company was greatly exercised over the heavy thefts which were made on merchandise intrusted to his steamer line on merchandise to Philadelphia, especially so on valuable drugs. Packages which appeared to be absolutely untampered with, when opened up at the consignee's office, would have their contents abstracted in whole or in part and an equivalent weight of bricks, stones, or other foreign matter substituted, so that the packages would appear to be all right, while the condition of the cases apparently showed no signs of tampering with. These two facts indicate that ample opportunity was enjoyed by the thieves to handle these cases scientifically—opening them up without damage, noting the weights, and then abstracting the contents and inserting the full weight of worthless material, and resealing the case ready for delivery.

The use of detectives apparently was useless to ascertain who were the thieves, and the thefts did not stop until the official of the steamship company above referred to called together his entire staff of dock men, masters of vessels, etc., and told them that if the thefts did not stop forthwith everyone of them would be discharged and a new force engaged.

The conditions recited then promptly stopped, thus proving that the thefts occurred while in the hands of the employees of that common carrier.

These illustrations could be multiplied ad infinitum, but there will be many representatives of shippers, exporters, and importers, who will be prepared to testify before this honorable committee as to their own experience.

What I, as an insurance man desire to do particularly, however, is to call to the attention of the committee the causes which, in my opinion, have brought about the present deplorable state of affairs, and the remedies which should be adopted to terminate them.

The first cause is, of course, the general wave of lawlessness now existing in most countries affected by the Great War (this applies not only to losses on merchandise entrusted to common carriers, but to the thefts and robberies which are now so prevalent).

This will have to be handled by a fearless and impartial administration of justice unadulterated by sentimentalism and sympathy, but the principal cause, in my mind, of the losses sustained by merchants, who entrust their goods to common carriers for transportation, is due to the frequent diminishing of the legal liability of the carrier for proper care and custody of merchandise entrusted to him by reason of legislative decisions and/or statutory enactments authorizing and/or upholding what is known as the "released bill of lading."

A released bill of lading is one in which the liability of the carrier has been limited by virtue of an agreement with the shipper.

A full bill of lading is one in which the carrier assumes complete legal responsibility for the goods he carries.

At common law the liability of a carrier covers every hurt or injury to the goods he carried, unless caused by the act of God, the public enemy, or their inherent nature. This liability was imposed

upon the carrier because the shipper parts entirely with the possession and control of the goods and knows nothing of what takes place during their carriage, while the carrier upon the other hand knows or has the means of knowing everything which befalls them, and if they be lost or damaged, how the loss or damage occurred. Such rule has the great merit of simplicity, and is perfectly reasonable because the carrier can charge a rate commensurate with the risk he assumes and it was and still is wise public policy to hold the carrier to strict accountability. Doing so increases his care and the care of his servants in the course of transportation, and generally increases the efficiency of the carrier's business.

In the course of time, however, this simple rule of the common law has been modified by statutes and judicial decisions, and the carrier's liability reduced or entirely eliminated under certain conditions. For example, a carrier was permitted to make an agreement with the shipper limiting the carrier's lossses to those of which he had received notice within an agreed upon time, or to an agreed upon value put upon the goods in consideration of their carriage at a low rate of freight, or that suits against the carrier must be brought within a limited time after delivery.

These statutes and decisions have had a far-reaching effect upon the carrier's liability and upon the safe and profitable conduct of commerce.

Whatever justice there may have been in the original arguments that brought these statutes and decisions into being, as a matter of practical result the remedy has proved worse than the disease it was designed to cure.

As heretofore recited, in recent years there has been a vast amount of theft and pilferage by carriers' employees, or permitted through their negligence, so that the losses upon this account have assumed enormous proportions, and the carriers have taken advantage of the clauses in their bills of lading to protect themselves against these losses, which has resulted in their falling solely upon the shipper or the underwriter. A wise public policy should at once be invoked to alter these conditions and restore, as far as practicable, the general rule of the common law so as to secure and maintain the highest standard of honesty and integrity, whether by land or water.

The practical result of the legalizing of the released bill of lading has been that the carrier has quoted a rate of freight which makes it obligatory upon the shipper to ship certain kinds of goods under released bill of lading, because if he does not do so in many cases he can not compete with other shippers in a similar line of business who avail themselves of its provisions, while the carrier on his part having insisted upon a valuation of merchandise entrusted to his care by the shipper, which valuation is entirely inadequate and bears no actual relation to the actual value of the property entrusted to him for transportation, has actually succeeded in doing what the law expressly denies him the right to do, namely, to escape his legal liability for his wrongful act, or the wrongful act of his servants. The result of this is that the carrier fails to protect the merchandise entrusted to him for carriers against damage or loss; he fails to exercise due diligence in its prompt transportation and delivery, and, as a result losses, due to pilferage, theft, and non-delivery, have

increased and are increasing by leaps and bounds, and have reached a point where they seriously menace the ability of merchants to do business or to ship their goods to or from ports and places in the world with any reasonable security that the merchandise they have shipped will be delivered at its destination.

It has become to the best interests of the carrier's employees, when the goods are injured, to report them as lost, and when they are stolen to report that they have no knowledge what has become of them. A merchant may ship a case of goods worth $2,000, under a released bill of lading, which he is compelled to accept by reason of competitive conditions, and in which the goods are valued at $100. They fail to arrive at destination, or are even stolen by the carrier's agent, and the merchant's only recovery against the carrier is the agreed-upon valuation. This the carrier may pay, and then if the goods turn up sell them at auction and receive therefor many times the amount paid the shipper. His dishonest agents may put this difference in their pockets without redress upon the part of the shipper; first, because he would not discover the fraud; or second, because he has already accepted in full satisfaction a payment for the limited value and makes no further inquiry or demand.

Surely such a condition is contrary to every public policy and ought to be changed, and that speedily. Carriers should not be permitted to contract for exemption from any responsibility beyond that imposed by the common law unless such exemption is just and reasonable. They should not be permitted to contract in any form, directly, or indirectly, for exemption from responsibility for their own negligence or the negligence of their servants. The bill of lading which the merchant is given should be uniform in terms, brief in language, and clear and distinct with respect to the rights of both carrier and shipper.

Let me explain a little more fully the processes which have brought about the present dereliction of duty on the part of many common carriers in failing to adequately care for and protect the property entrusted to their charge for transportation:

Ordinarily, as above recited, when the carrier received goods from a merchant for carriage to some other country or place he had to deliver those goods in like sound condition or else he had to show that their loss was not due to any neglect of himself or his employees. In other words, he was made an insurer of those goods except as against the act of God or the public enemy. The reason for this is when the merchant shipped his goods he parted with all ability to care for or supervise them, and entrusted that responsibility to the carrier, who was in a position to care for them, as they were in his (the carrier's) custody, subject to his control.

In Great Britain, however, always jealously anxious to foster her merchant marine, a practice grew up, and gradually developed, which provides that shippers of goods and the carriers might agree between them that the carriers should not be responsible, either in whole or in part, for their own delinquencies, and such agreements were upheld by the courts. Thus the carrier could insist on an agreed valuation of the merchandise intrusted to his care which was very much less than its actual value, and in the event of loss the carrier would only pay such agreed upon valuation.

It was also held to be legal to agree upon a very restricted period for the giving of notice of loss. In many cases notice of loss had to be given before the goods were removed from the dock. You can readily see that it is impossible in many instances for a merchant to comply with such a provision.

Specifications were also introduced in the bills of lading that the carrier should have the benefit of any insurance which the shipper might have effected on his goods. Thus in effect the common carrier confiscated to his own use the protection which the assured had paid for.

Also, the common carrier was allowed to accept bills of lading of a connecting common carrier which might be totally different in terms from the contract which he, himself, had made with the shipper, thus even if a shipper of goods had succeeded in securing a proper shipping document from his common carrier to whom he had intrusted his goods, such common carrier might turn them over to a connecting common carrier, and make any bargain he pleases with him, and if a loss occurred to the goods while in the custody of such connecting common carrier, the shipper might succeed only to the rights granted by such connecting common carrier, which might be very much less than those which he contracted for with the common carrier with whom he had originally made his contract.

In other words, Great Britain held to the theory that two parties were at liberty to make practically any contract they pleased regarding the transportation of merchandise by her ships. It being, I presume, the idea of the public authorities in Great Britain that by reducing the liability imposed upon her shipping to the smallest possible amount she would foster the growth of her mercantile marine.

That this fact has proved to be erroneous is indicated by the report of the Imperial Commission on Bill of Lading Reforms, which has just been held in England, copy of which I attach hereto, from which you will note it is found that the present conditions regarding theft and pilferage on board many English ships are very bad, and a recommendation is made that the liability of the shipowner be increased.

It has always seemed to me that the theory proceded on by England was totally wrong, and that if any nation desired to build up its mercantile marine it could not do better than insist that its ships should assume full responsibility for life and property intrusted to her for transportation.

To do so would, in my opinion, give her a heavy competitive advantage over the ships of another nation which applied the limited liability theory.

In the United States this theory of limited or reduced liability on the part of the carrier was not approved of for many years, but gradually the decisions of the courts in this country tended to confirm more and more the English decisions on this point.

In order to reaffirm the wise doctrine that the common carrier should be held as an insurer except as against the acts of God and the public enemy, and specifically to prohibit the bartering away of the rights of the shipper by so-called special contracts between the shipper and the carrier, Congress passed what is known as the

Harter Act of February 13, 1893, 37 Statutes at Large, page 445, chapter 105, which deals with transportation of merchandise between the United States and foreign countries, and the Cummins Act, and its various amendments ("An act to amend an act entitled 'An act to regulate commerce,' approved Feb. 4, 1887) and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved the 9th day of August, 1916, which deals principally with the shipment of merchandise by common carrier within the confines of the United States.

The Harter Act provides specifically:

> That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping documents any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

The manifest purpose and intention of this was to prohibit all bill-of-lading clauses which admitted of the whitewashing of the shipowner or common carrier for his own neglect or the neglect of his servants.

The courts of the United States, and of some of the States, however, in the handing down of decisions have whittled away the wise provisions of Congress as enacted in the Harter Act so that practically to-day that act is a "dead letter" as regards the care and custody of cargo intrusted to common carriers between the United States and foreign countries.

If the shipowner provides a seaworthy ship in the beginning, under these decisions of the courts he is not now held fully responsible for failing to deliver the goods in like good order and condition as he received them.

I submit a digest of these decisions herewith, which show the law as it now exists in the United States.

In brief the effect of these decisions is that, while the common carrier by sea can not contract away his liability for his torts or negligence he can limit them to a nominal amount for a consideration, and that he can also by agreement with the shipper arrange that claims shall be presented under what has proved to be in practice impossible conditions.

The theory that freedom of contract exists between the carrier and the shipper, which is the theory upon which all these decisions seem to be based is nothing more or less than a joke, and a bad practical joke at that on the merchant and shipowner.

Freedom of contract between a merchant and shipper and a common carrier has not, does not, and can not exist.

The shipowner maintaining a transportation service is in position unless restrained by the strong hand of the law, to put any condition he pleases in his bills of lading, and the shipper is obliged to accept it or else refrain from shipping his goods.

What freedom of contract is there in such an arrangement. It is absolute autocracy.

You present yourself with a case of merchandise, worth, let us say, $5,000 at the dock or office of a steamship company and say that you want the goods shipped from the United States to, say, South Africa.

The common carrier says he will be very glad to take it for you, but will only value it at $100, at his regular freight rates, and that he will only pay you $100 in the event of its being damaged or lost through his fault or error, and furthermore that you will have to let him know the full amount of your claim before you take the goods off the dock, and in the event of claim you will have to bring suit within, say, three months.

You naturally object to any such one-sided arrangement, and then the common carrier says if you want to value it at the full amount your freight will be fixed at a rate very much higher than the regular freight rate—indeed, at an amount which may seriously handicap you in competition with your neighbor, and may, in many cases make it impossible for you to ship in competition with him.

Can there be any valid argument why common carriers alone among individuals or corporate bodies should be allowed to escape the result of their own negligence, or that the courts of the United States should uphold them in this roundabout means of evading the obligations which Congress has laid upon them?

There is an old saying that "The proof of the pudding is in the eating."

When the common carriers were held to their strict responsibility and were not allowed to indirectly evade it by means of reduced valuation clauses, notice of loss clauses, and various other bill-of-lading clauses which have been introduced by them for the express purpose of avoiding their full responsibility to the shipper, they took very good care to see that they had honest employees, and to enforce discipline on their vessels, and in the men engaged in loading and unloading cargo, but under the law as interpreted by the courts at present it is very much cheaper for them to pay the small nominal damages, provided in the released bill of lading, in the event of a claim, rather than put in effect an adequate system of supervision and care, which would result in the elimination of the theft, pilferage, breakage, and nondelivery which is now sustained by merchants who are forced to ship under the various terms of the released bill of lading or not ship at all.

It is pertinent to consider the claim frequently made that the carrier, being in ignorance of the contents of cases or bales tendered to him for shipment, should not be held to pay for a value which has not been declared to him by the merchant.

With this contention I am in full and complete accord. The carrier should receive pay for three things:

First. The physical cost of transporting the merchandise intrusted to him;

Second. The cost of liquidating his liability to make full compensation for losses to such merchandise which occurred while in his custody; and

Third. He should receive an adequate profit on the whole transaction.

As regards the second obligation, somebody will, no doubt, say that provided the merchant is insured by some insurance company for these losses, why should the carrier be asked to assume them, and the answer is because the carrier can assume them at a less cost

than can the insurance company, and consequently it is to the public interest to have the carrier assume them rather than the insurance company.

All that an insurance company can do is to adjust its rate so as to receive a premium adequate to make good the loss sustained by the assured, while the carrier having within his own control the means to reduce or avoid all losses other than those caused by the act of God or the public enemy can reduce his rate to a very much less sum than can any insurance company.

The old apportionment of responsibility between the carrier and the insurance company should be restored, namely, that with certain limited exceptions the carrier was an insurer of the goods except as against the act of God and the public enemy, while the insurance company issued its policy to protect against the act of God and the public enemy. The two together giving the merchant perfect protection.

In the past some shippers have been found who favored the issuance of a released bill of lading on the ground that they could get a cheaper freight rate. I do not know whether there are as many gentlemen who hold to this opinion to-day as there were some years ago on account of the high insurance rates which necessarily ensued, but whether there are merchants who still cling to this opinion, or whether there are not, it seems to me as unwise to allow such a contract as it would be to allow the merchant to pay his liabilities with a reduced valued dollar, and for the same reason because as bad money drives out good, so does a bad bill of lading drive out a good bill of lading.

Nor will the reimposing of full liability upon the common carrier work any permanent hardship upon him. There will, of course, be a temporary hardship while he is weeding out his dishonest employees and while he is adjusting his freight rates to a somewhat slightly increased liability which has been reimposed upon him, but I would point out that shipowners in the past and at the present time insure this liability either with an insurance company or with mutual interinsurance clubs, and they can continue to cover this liability at a slightly increased premium, which increased premiums, in my view, will be speedily reduced, owing to reduced losses.

I would, therefore, urge upon this committee that they so amend the Harter Act that it shall no longer be lawful for the common carrier to demand or for the shipper to assent to any bill of lading, shipping document, private contract, covenant, or agreement whereby the carrier shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge, nor for any sum less than the full actual amount of such loss or damage, and whether the merchandise and property has been shipped at a reduced rate of freight or not or at an agreed-upon value which is less than its actual value, and that any or all clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect, and that in the event of loss or damage the burden of proving freedom from negligence shall be upon the vessel and her owner.

While, as regards the making of claims for loss or damage, notice of all claims for loss or damage visible from a superficial examina-

tion of the merchandise or of the barrel, box, bale, package, or other container holding the same shall be given the carrier before removal from the dock, and notice of all claims for loss or damage discoverable only by opening the barrel, box, package, bale, or other container shall be given the carrier within a reasonable time after the delivery of the merchandise to the receiver thereof, such reasonable time being determined by the nature of the merchandise transported and the circumstances of each case.

The foregoing remarks apply, as you will note, principally to shipments by sea between the United States and foreign countries, although many of the subjects dealt with apply also to shipments by land within the confines of the United States.

Shipments by sea are affected and come under the legislation provided by the Harter Act. Shipments by land are affected by and come under the jurisdiction of the law as provided by the Cummins Act. This is an act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, approved August 9, 1916.

The provisions of that act are, no doubt, well known to this committee, but in brief the Cummins Act provides that where the goods were hidden from view by wrapping, boxing, etc., the carrier, not being able to discover the character of the goods, and the carrier's liability would not then extend beyond the amount so specifically stated.

The Cummins Act of 1915 made a number of radical changes in the law of liability applicable to interstate transportation. Under the laws that existed before the Cummins amendment a common carrier in an interstate shipment could not limit its liability for its own negligence, but it could, by agreement with the shipper fairly entered into, limit the amount of its liability, whether caused by negligence or not. In other words, a shipper could undervalue his shipment in order to obtain a lower rate, provided it was agreed that transportation companies' liability in the event of loss would be limited to the value given. Such an arrangement was approved by the Federal courts.

The Cummins amendment in terms prevented the making of such an agreement, and provided that such a contract was unlawful, and that, notwithstanding any limitation, the shipper might recover the full value of the article where the loss was "caused by it" (the carrier). The quoted clause is the same as appears in the Carmac amendment, and has been construed to fix the liability of the carrier as it was at common law, which was a liability whether caused by the carrier's neglect or not, and not occasioned by the act of God or the public enemy or the inherent nature of the goods; but provided, however, that a carrier might limit its liability for a loss not due to his neglect by a fair and reasonable agreement based upon a proper consideration, usually a reduced rate.

The Cummins amendment act of 1916, amending the act of 1915, again changed the law and made certain changes and provided certain exemptions, as follows:

First. Baggage carried on passenger trains and boats carrying passengers are not within the Cummins Act.

Second. Property, other than baggage, concerning which the carrier has or shall be authorized or required to establish rates dependent upon values declared by the shipper or agreed upon in writing as a reasonable value of the property, is not within the Cummins Act.

Third. Ordinary live stock received for transportation is within the Cummins Act.

Fourth. Property received for transportation concerning which the carrier has not been or shall not thereafter be authorized or required to establish rates dependent upon values declared by the shipper or agreed upon in writing as the value of the property is within the Cummins Act.

Fifth. Live stock, such as is chiefly valued for breeding, racing, show purposes, or other special uses, is not within the Cummins Act.

Accordingly, as to classes 1, 2, and 5, the law is exactly as it was prior to the Cummins amendment, and this prohibits the carrier from exempting itself from liability for its negligence by any agreement, but permits the carrier to limit the amount of its liability by an agreement with the shipper fairly entered into and based upon a reduced rate. As to classes 3 and 4, no agreement can be made between the carrier and the shipper which will limit the liability of the former or release it from the payment of the full value of the property in case of its loss or destruction.

There have been no adjudged cases which we regard as authoritative since the amendment to the Cummins amendment August 9, 1916, and what the decision of the Supreme Court of the United States would be upon an agreement between a shipper and carrier limiting the carrier's liability for a definite amount is not possible to say. The probabilities are that if the agreement was supported by a definite consideration, such as a reduced rate of freight, it would be upheld.

Although the losses by theft and pilferage on merchandise shipped by common carriers within the confines of the United States are not as heavy in proportion to those shipped by sea, they are quite heavy enough.

In 1916 this company paid losses of $104,301.43; 1917, $441,868.59; 1918, $1,302,671.64; 1919, $263,027.39; 1920, $74,689.27.

This is by rail within the United States, gentlemen.

Owing to the heavy losses sustained in 1918 and 1919, this company heavily reduced its insurance on merchandise by rail and express in the United States, with the result that for the whole period mentioned it received a premium of $1,066,686.47 and paid net losses of $2,186,558.32.

I am not prepared to testify that all these losses were caused by theft and pilferage, because the usual claim was that the goods had never turned up, but it is safe to say that between 85 and 90 per cent were due to theft, pilferage, and/or nondelivery.

In my view the arguments which have been recited in the foregoing memorandum regarding the impropriety of allowing the common carrier by sea to reduce or escape his liability by reason of an agreement made with the shipper apply with equal validity to claims for loss within the United States.

There is this difference to be noted, however: The carrier by sea is free to fix his own freight rates; railroad and express companies

in the United States are under the jurisdiction of the Interstate Commerce Commission and are not so free, but that does not alter the hardship to the merchant or shipper of goods by railroads in the United States.

I would, therefore, suggest that the Cummins Act be amended so that where losses due to negligence occur to property delivered by common carrier, railroad, or transportation company the burden of proving freedom from negligence shall be upon the common carrier, railroad, and transportation company. Where such loss, damage, or negligence results from the negligence of the common carrier, railroad, or transportation company it shall be liable for the full actual loss, damage, or injury. It shall not have the right to limit the amount of recovery against it by reason of any declared or released value of such property.

The carrier should then be empowered to demand statement of value of merchandise transported by the shipper, and such value should be taken into consideration in adjusting the rates for transportation.

In conclusion I would like to say that I do not wish to be understood as claiming that all the losses sustained by merchants in the shipment of goods, whether by land or sea, are due to theft occurring while the goods are in the custody of the common carrier. Some of these thefts occur while the merchandise is still in the hands of shippers and prior to delivery to the common carrier.

A still larger amount occur from thefts in customhouse sheds and warehouses in foreign countries, especially in Latin America, and some of them occur while they are in the custody of private truckmen of the shipper or the consignee, but the experience of a number of years has convinced me that the greatest proportion of all occur while the goods are in the custody of the common carrier, and if the responsibility of the common carrier to make good in full such losses was restored that these losses would rapidly and steadily diminish, both in number and amount, and to the extent that they are diminished the present handicap on commerce due to such losses would be lightened or removed.

Now, Mr. Chairman, I submit herewith a statement which I have cut out, under date of last Friday, from the Journal of Commerce, in which it says that the claims against the railroads in 1919 reached the sum of $109,000,000. I also submit the rates of premium, to which I referred in my statement, which were charged by this company; also a statement or digest of decisions showing the law of common carriers in the United States; also the findings of the imperial shipping committee and their report on the limitation of shipowners' liability; and also a proposed amendment to section 1 of the Harter Act of February 13, 1893, 37 Statutes at Large, page 445, chapter 105.

(The papers submitted by Mr. Rush will be found at the conclusion of his statement, with the exception of the report of the British Imperial Shipping Committee, which appears as an appendix to these hearings.)

Mr. LEHLBACH. Mr. Rush, in amplifying your statement, I would like to ask questions on points that you have covered, as to which it seems to me it might be valuable to bring out the information more in detail.

Do you believe that water carriers should be permitted to stipulate in their bills of lading that the carrier shall not be responsible for loss caused by heat, shrinkage, drainage, sweat of any kind or origin, leakage, loss of contents or weight? It has been contended that the inclusion of these sources of loss would appear to relieve the company of responsibility for the careful handling and stowage of cargo.

Mr. RUSH. If such losses are due to their own negligence, they should be responsible for them. The whole question hinges on their own negligence and the negligence of their servants. For instance, if they take a shipment of butter and stow it next to the boiler, and a loss results, the carrier should be responsible for that loss.

Mr. LEHLBACH. Do you believe, in your judgment, before the law had been construed, that was a violation of the Harter Act?

Mr. RUSH. Yes, sir.

Mr. LEHLBACH. Do you believe that water carriers should be permitted to stipulate this provision in their bills of lading—that the carrier, at its option, shall have all rights and benefits granted to shipowners limiting, or permitting a limitation of, their liabilty by the laws and/or customs of any other State and/or country into a port of which said vessel may enter, or at which she may touch, and/or in which said vessel may be attached or libeled, or carrier may be sued, or any loss and/or damage to said merchandise?

Mr. RUSH. It would seem to me that the law of the United States should be paramount, sir; and whenever that carrier contracts with a United States merchant, he should settle with the merchant or deliver the goods.

Mr. LEHLBACH. No matter where the loss may occur?

Mr. RUSH. It should attach; no matter where the loss may occur. I believe the United States law should apply and I believe it will apply.

Mr. LEHLBACH. How about this: Do you believe that water carriers should be permitted to stipulate in their bills of lading that any omission to exercise due diligence shall not be presumed, but the same must, if claimed or alleged, be proved by the shipper? You have already touched on that, but will you elaborate a little further on that?

Mr. RUSH. The theory is this——

Mr. LEHLBACH. Why should not the burden of proof be on the plaintiff in this case, as in others?

Mr. RUSH. The merchant has to prove the goods were in good condition, and if he proves they were in good condition when delivered to the carrier and they are delivered in a damaged condition, then the responsibility should rest on the carrier of proving how they got damaged. If he is able to prove they were lost because of perils of the sea, by force majeur, or acts of a public enemy, he is relieved; but if he does not prove that, then he is responsible.

Mr. LEHLBACH. If legislation is recommended, such as amendment of the Harter Act, do you agree with the Imperial Shipping Committee of Great Britain, as stated in its report, that due regard for elasticity should be given at two points, namely, (*a*) as to new and exceptional articles, voyages, and methods of carriage, and (*b*) curtailment of liability in exceptional circumstances; or do you believe that the liability imposed should be the same under all circumstances?

Mr. RUSH. It is very hard to be a prophet of what is going to happen in the future. I think the best way to do is to pass a law which will apply to everything; then, when an exception comes up, such, for instance, as a shipment of some kind of goods that has never been made before, it can be dealt with by the courts as they go along.

Mr. LEHLBACH. Would, in your opinion, strict liability under all circumstances act as a deterrent to new ventures?

Mr. RUSH. No, sir; I do not think so, provided you get paid for doing it.

Mr. LEHLBACH. Do you think that the situation would be adequately met by providing a reasonable maximum value as a limit of liability for damage, or several maximum limits for the various trades?

Mr. RUSH. My personal belief is that a man ought to be able to collect in full from the common carrier, just the same as from any tort feasor. As a matter of practice, in the past carriers used to have regular classifications of goods, quite a number of them; and in practice it worked out fairly satisfactorily, provided those values were approximately the values of the goods, which were, of course, rising and falling all the time. But I do not see any reason why a common carrier should not pay in full, any more than you or I, for whatever damage we may cause.

Mr. LEHLBACH. It has been suggested difficulty might arise as to the determination of the point at which the damage or loss may have occurred; for example, where the shipment is from warehouse to warehouse and it has developed there is nondelivery, and it is difficult to ascertain at what point loss occurred, or theft, if it is the result of theft. What suggestion have you to make on that?

Mr. RUSH. The position I take is this: As between two parties, one absolutely innocent and one who may be either innocent or guilty, the absolutely innocent person should have the first call. The merchant is not responsible for that loss; one of those carriers is. Make the delivering carrier, who is the man to whom the merchant can look, responsible and let him go back on the next one until it is found.

Mr. LEHLBACH. Aside from the remedy by legislation as you suggest, do you believe any substantial improvement can be accomplished from cooperative methods between the three groups of interested parties—the shippers, shipowners, and underwriters? Do you think that is feasible?

Mr. RUSH. Not until the law is changed to give the shipowner an interest to so cooperate.

Mr. LEHLBACH. Do you think it is practicable to have two bills of lading—(1) an insured bill of lading, under which a shipper, in exchange for reasonable guaranties as to packing, etc., shall receive protection against all loss that may result; or (2) a form of bill of lading under which there shall be no responsibility upon anyone except the shipper, and he takes his own chances on methods of pocking and transportation?

Mr. RUSH. I do not quite understand the question, Mr. Chairman. You mean that the shipowner is to issue a bill of lading to the shipper, under which he, the shipowner, undertakes to insure

the goods against all risks, or does he place that risk with some insurance company? How is that worked?

Mr. LEHLBACH. No; the shipowner, upon receiving reasonable guaranties from the shipper that his goods are properly packed and safeguarded against loss, as far as he is able, assumes the full responsibility for any loss in transporting, except from the act of God or a public enemy—that kind of a bill of lading that you have suggested here in your statement?

Mr. RUSH. That is exactly the thing——

Mr. LEHLBACH. Now, do you believe it is possible to have that kind of a bill of lading, and also to provide a released bill of lading which leaves the responsibility up to the shipper for the transport and divests the carrier from any liability as to what happens to the goods in transport, and he receiving merely a sufficient freight charge that would cover the transport charges and nothing else, and leaving the shipper to elect in which way he wishes to ship?

Mr. RUSH. It would be extremely unwise and absolutely contrary to public policy for the reason I have recited, namely, that a bad bill of lading would drive out a good bill of lading. That is practically the condition which exists to-day.

Mr. LEHLBACH. Have you any other suggestions to offer for improving the situation, except as you have set forth in your statement?

Mr. RUSH. Perhaps I had better give a little résumé of the Harter Act. It is a little bit before the time of the gentlemen of the committee here to-day.

Mr. LEHLBACH. I think most of us have read it, even recently.

Mr. RUSH. In brief, Congressman Michael D. Harter, who was a miller in Ohio, had some bad losses on the flour he shipped. The old man was hot under the collar, and he went to work to put into code what was already case law of the United States, and he got a law whereby he thought the common carrier could not be allowed to duck from under his liability. Representatives of the common carriers went to Mr. Harter, who was a good miller and a good Congressman but a poor lawyer, and they said, "Now, you do not want anything unreasonable, do you?" And he said, "No." And they said, "If we furnish you with a perfectly seaworthy ship, that is all right!" He said, "Of course." They thereby succeeded in putting in the Harter Act a release of liability which was greater than that existing at that time, and Michael Harter never knew they had done it. The Harter Act provided:

> That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Despite that, they illegally put clauses in the bill of lading allowing the carrier to eliminate legal responsibility. The courts of the United States and of various States, notably New York, while upholding the principle that the carrier can not contract himself out of his liability, have wiped the sponge over the whole slate by saying,

"While you can not get rid of your legal responsibility, you can reduce it to a nominal sum," thereby voiding the exact purpose of the Harter Act enacted by Congress.

My view is, the first thing to do is to restore that act and then the courts of the United States presumably will be required to construe that act as it was originally intended—to give the shipper protection. That, to my mind, is the first thing.

I have gone in past years very deeply into the question of the shipper's packing, into the time of delivery, truckman's liability, and all that sort of thing, and I have never yet been able to get any scheme of packing, short of having a man with a gun sitting on top of the goods, that gets away from these thieves. The only people who can handle that are the shipowners, who are there and have the stuff in custody, either on their vessels or on their docks. It is possible for the shipowner to do that, and he ought to do it, and he ought to be paid for doing it; and, in my judgment, that is the only way for it to be done.

If this law is passed, there will be, of course, certain improvements in packing. The shipowner will insist on it. At present he does not care very much whether the goods are packed in pasteboard cartons or packed with good stuff, because it is the shipper's loss and not the shipowner's. It is purely, in my mind, first and foremost, a question of getting the liability of the common carrier back to what it had been for two centuries and a half, and when that is done the other things will follow.

Mr. LEHLBACH. What have you to suggest as to any increase of the liability of common carriers for negligence imposed upon our carriers by law constituting an additional burden to those carriers at a time when we are seeking to promote our merchant marine and enable them to compete?

Mr. RUSH. We used to insure goods for all carriers to Great Britain at 2½ cents, which is a nominal rate. It is not enough to hurt anybody, and I do not see why we should not be able to do it again if he can get honest aids. I think if the carrier advertises that he assumes full responsibility for all merchandise shipped by it I could and would make a preferred rate on that carrier, as against others, if I thought I could get my full recovery from him.

Mr. LEHLBACH. Have you experienced any great difference as between carriers as to the volume of claims for loss resulting from theft, breakage, and nondelivery?

Mr. RUSH. There is a difference; yes. Some of them are a great deal better than others.

Mr. LEHLBACH. And have you experienced such a difference as between various foreign markets; is there a greater claim for loss in some foreign markets than there is in others?

Mr. RUSH. Latin-America is the worst one. I have been informed that the regular dockman on the docks of Callao, whose wages are $2 a day, pays about $2,000 a year for the privilege of working there.

Mr. LEHLBACH. To what do you attribute the difference as between carriers as to the amount of losses sustained in this line?

Mr. RUSH. Some common carriers have a reputation that they like to keep up, and the reputation of the line is worth a great deal to them. The Ward Line is one of them—it is now called the New York

& Cuban Mail. They do the best they can, and the Cunard Line do the best they can. The first-class carriers, I think, want to deliver their stuff in good condition.

Mr. LEHLBACH. And the difference in losses at foreign ports, I suppose, is due to national honesty?

Mr. RUSH. One of our surveyors went down to Cuba not so long ago. He was there a few months, and when he came back he stated he could have made $100,000 in that time by improper viséing of claims for goods as stolen that he could lay his hands on.

Mr. LEHLBACH. I take it such conditions do not generally obtain in European ports or our American ports?

Mr. RUSH. No, sir. They are not as bad anywhere else as in Latin-America. The rates there are 6, 7, and 8 per cent.

Mr. LEHLBACH. Does any member of the committee or any representative of the Shipping Board sitting with the committee, Mr. Lissner or Mr. Gaines, desire to ask any question?

Mr. CAMPBELL. Would you ask Mr. Rush just this one question for me?

Mr. LEHLBACH. What rate of premium did you charge for theft and pilferage during the 10 years prior to 1914?

Mr. RUSH. It varied a great deal, depending on where the goods were going and where they were coming from. To Europe it was generally very low; to South America it was high, but not as high as it is now.

Mr. CAMPBELL. I would like to have the figures if I could, because he has given the figures so far. Give the percentage or something.

Mr. LEHLBACH. Have you the figures with you?

Mr. RUSH. No, sir; because it was so slight I did not bother to keep them.

Mr. EDMONDS. You mean the difference between the rate to-day and the rate then was slight?

Mr. RUSH. No, sir; the rate for theft and pilferage then was nominal.

Mr. EDMONDS. You could furnish us with a statement of what they would run 10 years ago, could you not?

Mr. RUSH. It would be a nominal rate, Mr. Edmonds; it was so small we would not keep the account separately at all.

Mr. EDMONDS. You can furnish us with an estimate?

Mr. RUSH. I can give you the rate.

Mr. EDMONDS. Has it ever been the custom in any country—this country or any other country—for the shipowner to accept the liability and then do whatever insuring was necessary himself?

Mr. RUSH. Certain coastwise lines, sir, used to have what they called a cargo cover; that is, they themselves would place insurance on their cargoes and then they would pay such claims as that insurance covered. They never paid all claims, but paid such claims as that insurance covered. That was done for convenience to the shippers. It has never prevailed in the off-shore traffic.

Mr. EDMONDS. I have been informed in England a cargo carrier does his own insuring against pilferage and covers it in the freight rate. Is that true?

Mr. RUSH. I am not prepared to testify with regard to P. & I., except I know the foreign steamship owner does insure his legal liability—such liability as is imposed upon him by the laws of his coun-

try—in mutual clubs and in Lloyds and elsewhere. That is what I referred to in my statement, that for the liability which he has in his bill of lading he is covered by insurance.

Mr. EDMONDS. Do they have that same limiting of liability in England that they have here?

Mr. RUSH. Much more so.

Mr. EDMONDS. You mean the contract is recognized by the courts between the shipowner and the shipper?

Mr. RUSH. Yes, sir.

Mr. EDMONDS. And they can limit their liability to anything they want?

Mr. RUSH. Pretty much; not for murder or anything of that kind.

Mr. EDMONDS. I have not read this report of the commission——

Mr. RUSH. That will give you the full particulars.

Mr. EDMONDS (continuing). But does that report of the commission correct that situation?

Mr. RUSH. That is intended to correct it. It is pretty near as bad in England as it is here.

Mr. EDMONDS. Do you understand this report has been put into operation?

Mr. RUSH. No, sir; I do not understand that yet. It is a recommendation.

Mr. EDMONDS. A recommendation to the board of trade?

Mr. RUSH. The chairman of the imperial commission is the man who gets the recommendation, and I presume he will report to Parliament.

Mr. EDMONDS. It is subject, then, to an act of Parliament?

Mr. RUSH. I suppose so.

Dr. HUEBNER. Has not the imperial British shipping committee reported that the fixing of nominal values by agreement should be prohibited by law?

Mr. RUSH. I think it so states in the recommendation, sir.

Mr. LEHLBACH. Do you think the question is of sufficient importance that the nation that first succeeds in devising methods to check this loss and waste will gain any decided advantage in handling the shipping of the world?

Mr. RUSH. Yes, sir: I think you will always gain by common honesty. I have never known it to fail. Here are men in the employ of carriers—understand me, I do not believe the common carriers countenance this theft at all; they do not get anything out of it, but their employees do and they all think it is a kind of perquisite they can get, and they can dress their families in silk shirts and silk stockings, and they can get anything they want out of it and nobody is going to hold them up.

Mr. EDMONDS. Of course, if an insurance rate of 10 per cent against pilfering, or even 5 per cent, could be reduced to 1 per cent, it would mean you could land your goods very much more cheaply in the country to which they are shipped?

Mr. RUSH. Very much cheaper. If I may call the attention of the committee to the rates on the rate sheet, they will find it very illuminating as to the classes of goods most likely to be stolen, and the rates charged to the various ports throughout the world, and they can see how high they are.

Mr. EDMONDS. And even that high rate is not leaving you any profit in the business?

Mr. RUSH. No; it is not. I do not believe in Latin-America; it is possible to keep up with it; and in Europe, every one of the rates is getting so high as to be a very heavy handicap on trade.

Mr. LEHLBACH. Have you experienced much loss from sabotage and the driving of hooks into perishable commodities and the breakage of packages?

Mr. RUSH. No, sir; not from my experience. They will drive a hook into a package and rip off the boards to see what is in there and whether it is something they care to steal: but they are careful not to damage any goods, because then they would have no value when they went to sell them.

Commissioner LISSNER. You gave some figures about the percentage of losses on water shipments?

Mr. RUSH. Yes, sir.

Commissioner LISSNER. Have you any comparative figures of percentage losses of rail carriers for the years 1916 to 1921?

Mr. RUSH. I have not, sir; because we have not been able to distinguish the causes of the losses. The stuff simply vanished and the claim came in to us from the merchant, say, in New York, Chicago. or somewhere else, that three cases of stockings had not arrived, and we sent a tracer out to the railroad and fussed over that thing for three or four months and then it would go up like a puff of smoke; he could not find it. We believed it to be theft, but we could not show it and could not put it down as theft, and so we simply said that was a loss in transit. Now, in 1918, the business got so bad—that is, the time when the congestion came on—we just turned down that line and said we could not take any more. In 1919 we were paying losses hanging over from 1918, and in 1920 we were getting salvages back from the carriers; but it did not go far enough in the ocean-going field where it paid us to handle this thing.

Commissioner LISSNER. Does the usual form of policy you issue cover warehouse to warehouse, or what limitations do you put on it?

Mr. RUSH. It usually covers warehouse to warehouse.

Commissioner LISSNER. Can you express an opinion as to where the greater loss on these items occurs, or what the proportion is as between rail and water?

Mr. RUSH. If you ask me as to shipping to the eastern coast, of course my answer is it mostly occurs from the time it is shipped, we will say, in London, to the time it is delivered by the carrier to the insured on the eastern seaboard. That is in the case of the water carrier. If it is shipped to the interior of the country, it may occur in both places, and until there is some means of examining and checking up, to see whether your case which is delivered by the Cunard Line and piled up on the wharf is whole when the case is delivered to the Pennsylvania Railroad, you can not cover it.

Commissioner LISSNER. My question is whether you have any opinion as to that.

Mr. RUSH. My idea is it really occurs on the docks and in lowering it into the holds of the steamers. I have known of cases where in loading a vessel the thing would be taken up on the boom and swung out, and instead of being swung into the vessel, so as to be carried, the boom would be swung clean across the vessel and the goods low-

ered into a lighter down on the other side, and yet when it got to destination it would apparently be a loss while in their custody, and it would be a loss while in their custody, and the officers and masters ought to have seen it did not go too far over and that it went down into the hold.

Commissioner LISSNER. Of course, you insure a great many shipments by rail only?

Mr. RUSH. Yes, sir.

Commissioner LISSNER. What is the comparison, if you can state it, for loss from these causes on rail shipments as compared with water shipment only?

Mr. RUSH. I can only give you my impression, Mr. Lissner, that the water is a good deal worse. The Cummins Act is not so wide open as the court's construction of the Harter Act. The railroads do have to pay a bigger proportion of their liabilities than the ocean carrier does; consequently, they do take more care with it. That is my impression. I have no figures to justify that, sir, because, as I say, I dropped out of the business in 1919.

Dr. HUEBNER. Does the railroad bill of lading contain as many exemption clauses as you find in the average water bill of lading?

Mr. RUSH. Certainly not, sir; they would not be allowed to.

(The matter previously referred to is as follows:)

SEEK TO REDUCE RAIL FREIGHT LOSS—CLAIMS AGAINST ROADS IN 1920 REACHED $109,000,000—AISHTON SAYS 21 PER CENT OF LOSS WAS DUE TO THEFTS—COOPERATION AND GREATER CARE TO BE SOUGHT—COMMITTEE TO WORK OUT PLAN.

Immediate action to secure greater care in the packing and handling of freight so as to eliminate the huge annual loss to the railroads of the country, placed last year at $109,000,000 was mapped out at a meeting of the protective section of the American Railway Association held yesterday at the Hotel Pennsylvania. The appointment of a committee was determined upon as the best means of bringing together all of the facts and suggestions which might aid in the movement to save the carriers money on claims.

Some of the suggestions which were made yesterday included closer cooperation between the railroads and the Federal authorities, more prompt reports on loss when noted, and a strict surveillance of auction rooms where stolen material is sometimes placed for sale. In the course of his remarks at the meeting yesterday, W. W. Atterbury, vice president of the Pennsylvania Railroad, pointed out that total loss to the carriers through freight claims last year amounted to approximately $109,000,000. R. H. Aishton, president of the American Railway Association, stated that of this total as high as 21 per cent represented losses to the roads through thefts and robberies.

During the course of the afternoon session it was pointed out that from September last year until March of this year there had been losses to the railroads through theft alone of something over $3,000,000 worth of goods. Allowances must be made, however, for the fact that the cost price of materials, which is figured in the claims lodged against the roads, has risen considerably during the past few years. It is understood that the losses to the roads last year were a new high record.

With the appointment of a committee of railroad men it is expected that some definite action will be brought to the attention of the American Railway Association in the comparatively near future. Unlocated losses of entire packages and concealed losses, together with methods of receiving freight, were discussed by the 126 members of the protective section of the association present at the meeting yesterday. A suggestion was made for the creation of terminal police associations in the larger cities to work with the association.

A more uniform method of handling witnesses with expenses for obtaining evidence and other kindred matters were discussed. It was contended that an educational campaign should be instituted to teach shippers the importance of crating and freighting their goods in a more serviceable manner and in stronger containers to avoid their being broken into. It was urged by some

of the members that robberies of freight be first reported to the local police by the railroad agents or other employees instead of to railroad officials.

Ocean marine business—Rates for theft and pilferage on and after Mar. 1, 1921.

	Class 1.		Class 2.		Class 3.		Class 4.	
	Released bill of lading.	Full liability assumed by carrier.	Released bill of lading.	Full liability assumed by carrier.	Released bill of lading.	Full liability assumed by carrier.	Released bill of lading.	Full liability assumed by carrier.
United Kingdom and Ireland	1/8	5	1/4	10	3/4	20	2	40
France	1/4	15	1/2	22 1/2	2	3/8	3	67 1/2
Holland	1/4	15	3/8	22 1/2	1	3/8	2 1/2	67 1/2
Belgium	1/2	15	5/8	22 1/2	2	3/8	3	67 1/2
Germany:								
Ports	1/2	3/8	3/4	5/8	2 1/2	1	5	2 1/4
Interior	1	3/4	1 1/2	1	3 1/2	1 1/4	6	3
Denmark, Norway, Sweden	3/8	22 1/2	1/2	30	2	60	3	1 1/4
Spain, Portugal	1/2	30	5/8	50	2	3/4	4	2 1/4
Italy	1	1/2	1 3/8	3/4	3 1/2	2	6 1/2	4
Czechoslovakia	2	1	3	1 1/2	5	3	7	4
Switzerland	3/8	22 1/2	1/2	30	1 1/2	90	4	1.80
Austria	2	1	3	1 1/2	5	2	7	4
Greece	1	60	2	1.20	4	2 1/2	6	4
Turkey	1	60	2	1.20	4	2 1/2	6	4
Rumania, Serbia, Montenegro, Bulgaria	1	60	2	1.20	4	2 1/2	6	
Poland:								
Ports	1	60	1 1/2	80	2 1/2	1 1/2	5	2 1/2
Interior	2	1 1/4	3	1.80	1.80	2 1/2	7	3 1/2
Asia Minor	1	60	2	1.20	4	2 1/2	6	4
North Africa	1	60	1 1/2	90	3	1.80	5	3
British Africa—West, South, and East (direct)	3/8	22 1/2	1/2	30	3/4	45	1 3/4	3/4
Arabia	1	60	1 1/2	80	3	1.75	5	3 1/2
Persia	1	60	1 1/2	80	3	1.75	5	3 1/2
India, Ceylon	1/4	1/8	3/8	20	3/4	30	3	67 1/2
Straits Settlements:								
Indo-China, Java	1/4	1/8	3/8	20	3/4	30	3	67 1/2
Sumatra, China, Japan	1/4	15	3/8	22 1/2	1	3/8	3	67 1/2
Siberia, ports only	1	60	1 1/2	90	3	1.80	5	3
Philippines	1/2	1/8	7/8	20	1	30	3 1/2	67 1/2
Hawaii	1/8	5	1/4	10	1/2	20	1	40
Australia and New Zealand	1/2	22 1/2	5/8	30	7/8	50	3	1
Haiti	5/8	30	3/4	3/8	2 1/2	75	6	1
Porto Rico	1/4	15	3/8	22 1/2	1 1/4	3/8	4	67 1/2
Other West Indies	1/4	15	3/8	22 1/2	3	3/8	4	67 1/2
Central America:								
East coast ports	5/8	22 1/2	3/4	30	3	60	4 1/2	90
Interior	2	82 1/2	2 1/2	90	4	1.20	6	1.80
West coast ports	3/4	30	1	3/8	3	3/4	5	1.20
Interior	2 1/2	90	3	1.05	4	1.35	7	2
Panama	3/8	1/8	1/2	20	1	30	4	1/2
Colombia:								
Ports	1	30	3	45	4	60	7	75
Interior	4	1 3/4	5	2 1/4	6	3	9	4
Venezuela	3/4	20	1	30	4	50	5	60
Guianas	5/8	20	3/4	30	3	1/2	5	3/4
Brazil, direct	1	30	2 1/2	50	5	3/4	8	1
Argentina, direct	1 3/4	30	3	1/2	6	3/4	9	1
Uruguay, direct	1	30	2 1/2	1/2	5	3/4	8	1
Paraguay, direct	1	30	2 1/2	1/2	5	3/4	8	1
Ecuador:								
Ports	1 1/2	3/4	2	1	6	1 1/4	8	2 1/4
Interior	2 1/2	1 1/4	5	2	7	2 1/2	9	3 3/4
Bolivia, interior	3	1 1/4	5	2	7	2 1/2	9	3 3/4
Peru:								
Ports	3	1 1/2	4	1 3/4	7	2 1/4	8	4
Interior	4	1 5/8	5	2 1/4	8	3	9 1/2	4 1/2
Chile:								
Ports	3	1 1/2	4	1 3/4	7	2 1/4	8	4
Interior	4	1 5/8	5	2 1/4	8	3	9 1/2	4 1/2

Class 1: Approved merchandise other than classes 2, 3, and 4.
Class 2: Billiard balls, cigars, optical instruments, hardware.
Class 3: Velvet, antiques, jewelry (cheap), smoking articles, razors and blades, sporting goods, toilet articles, knives, tools, dry goods.
Class 4: Embroideries, ribbons, laces, watches and parts, perfumery, silk goods, woolen cloth, clocks, handkerchiefs, notions, plated ware, silverware, canned fish, cotton piece goods in cases, cutlery, beets, hats and caps, gloves and glove leather, haberdashery, hosiery, leather in cases or bales, neckties, underwear, clothing, beads, beaded bags, shirts, collars, sweaters, furs, rifles, revolvers, candy, confections, guns, glassware, foodstuffs, toys.

A Brief Summary of the American Law of Common Carriers for the Loss or Damage of Merchandise.

A common carrier is one who holds himself out to the public to transport persons or freight for hire. The definition has been otherwise given as one who undertakes for hire to transport persons or freight for all who choose to employ him.

The carrier exercises a public employment, and sometimes possesses a legal or real monopoly. He selects his own methods of transportation, his own time for performance, provided it is reasonable, and his own employees. He exercises absolute control over the transit, and usually fixes his own charges. Hence the settled rule of law for ages was to impose upon him liability for all loss or damage unless caused by the act of God or the public enemy. Such an extent of liability was vital for the maintenance of commerce and for the safety of those who dealt with the carrier, and it was based upon the moral principle of prudence, removing from him all temptation and imposing upon him all liability except for causes manifestly beyond his control.

Gordon v. Litter (8 S. & R. (Pa.) 533).—Although the shipping conditions of modern life have led to reasonable modification of this stringency, the common-law rule still exists in the main, and with the immense increase in the business of carriers and the long distances to which they transport goods, have added to rather than diminished the difficulties of a shipper who seeks to recover a loss or injury to his goods. These very factors have at the same time increased the opportunities and temptations of the carrier and his employees to neglect or violate his trust. The carrier's control of the goods intrusted to him, the means of transit, the time of shipment and delivery, the appointment of employees, and all other conditions of the carriage are just as absolute as when the wise old rule was laid down. But the great hardship imposed on the carrier in certain special cases where goods of great value were either delivered to him without notice of their character or which required great tenderness in handling, without notice of the extra care required, and losses happening by sheer accident, without any possibility of fraud or collusion, such as a collision at sea by night or in a fog or an accidental fire spreading to his property from some other source, all gradually led to a reasonable relaxation of the old rule where the carrier and shipper expressly thereunto agreed.

N. Y. Cen. R. R. v. Lockwood (17 Wallace, 357).—The limitation agreed upon must be one the law recognizes as reasonable and consistent with sound public policy.

Southern Express Co. v. Caldwell (21 Wallace, 264).—Congress saw fit to pass certain statutes exempting carriers by water from their full common-law liability under certain circumstances. Thus, in the case of seagoing vessels, the act of 1851, sections 4281, 4282, and 4283, subsequently amended by the act of February 13, 1893, relieved the shipowners from all responsibility for loss by fire, unless caused by their own design and neglect; for loss of money and other valuables, unless the carrier was notified of their character; and limiting the sum total of the shipowner's liability to the value of the ship and freight pending, where the loss happened by the act of the master, crew, or passengers, or by collision, or any cause without the privity or knowledge of the owners. These statutes, however, do not apply to express companies or common carriers who avail themselves of steamboats and other vessels for the transportation of express matter in the fulfillment of contracts under which such express companies assume common-law liability.

Hill Manufacturing Co. v. Boston R. Corp. (104 Mass. 122).—The amendment of 1893, commonly known as the Harter Act, expressly prohibits, as to any vessel transporting merchandise between ports of the United States and foreign countries, any stipulation relieving the carrier from liability for loss or damage

arising from negligence in the loading or stowage and other handling of the cargo, and this act invalidates any provision in an ocean bill of lading that the law of the flag of the vessel carrying the goods shall govern, because the act applies to foreign vessels bound on a voyage from a foreign port to this country.

Knott v. Botany Mills (179 U. S., 69).—The Harter Act was passed on account of the growing tendency of the English courts to uphold any limitation upon the carrier's common-law liability as reasonable, and because English shipowners were issuing bills of lading imposing all sorts of conditions and exemptions, which left the shipper wholly unprotected and at the carrier's mercy.

The Delaware (161 U. S., 459).—The Harter Act and the statutory limitations of a vessel owner's liability were not impliedly repealed by the interstate commerce act.

Alaska S. S. Co. v. U. S. (259 Fed., 743).—Furthermore, Congress, by the act of June 29, 1906, known as the Carmack amendment to the interstate commerce act of February 4, 1887, fixed the liability of a common carrier for interstate shipments as that of the common law, but in the case of Adams Express Company *v.* Cronniger (226 U. S., 491) the Supreme Court of the United States declared that the carrier could by special contract limit his common-law liability with respect to certain causes of loss and the amount payable in the event of a recovery, but could not limit his liability for negligence.

The right to limit the amount recoverable was held valid even in cases where the loss occurred through the carrier's negligence, but upon the ground that such a limitation was not a limitation of liability but a limitation of recoverability, and if such limitation was in consideration of a reduced rate of freight, it was reasonable and binding upon the shipper and carrier where fairly entered into.

Hart v. Pa. R. R. (112 U. S., 331).—Before the Carmack amendment, such a limitation with respect to the amount recoverable from the carriers was held in some of the State courts as void if the loss occurred through the carrier's neglect.

Pa. R. R. v. Hughes (202 Pa., 222 (1902)).—But this case was appealed to the Supreme Court of the United States upon the ground that the interstate commerce act of 1887 was legislation upon the subject of interstate commerce and Congress had therefore assumed exclusive jurisdiction of the matter; and as under the Federal decisions such a limitation has been upheld, those decisions ought to govern in a suit in a State court where a different rule has prevailed. The Supreme Court, however, held that Congress by the interstate commerce act had not assumed such exclusive control and refused to reverse the Pennsylvania decision. However, by the Carmack amendment, Congress has since taken entire possession of the subject of interstate commerce, and now all interstate shipments are governed by the acts of Congress and the Federal decisions, and not by the acts or decisions of the several States.

The rule of law laid down in the Cronniger case has been followed in numerous later decisions. One of the latest is that of Marianni Brothers *v.* Wilson Sons Company (177 N. Y. S., 333 (1919), in which is was held that a limitation of the amount recoverable was binding upon the shipper even in the case of a loss by negligence under the Harter Act.

The present state of the law upon the carrier's liability is as follows: "Upon interstate shipments: Upon an interstate shipment made in the United States, a common carrier, in the absence of a special contract, is liable for all loss or damage which may happen to goods or merchandise entrusted to his care, unless such loss or damage be caused by the act of God or the public enemy or by the inherent nature of the goods or merchandise or by some act or default of the shipper himself."

Hannibal & St. J. R. Co. v. Swift (12 Wallace, 262); Cronninger v. Adams Express Co. (226 U. S., 491 (1912)).—As the Supreme Court of the United States puts it, the liability of a common carrier for the safe transportation and delivery of goods has long been settled by the common law for every hurt or injury to them, unless caused by the act of God or the public enemy.

The Commander in Chief (1 Wallace, 43).—This has been the law for many generations. It had its origin when the Government of England afforded imperfect protection to goods in transit and when robberies were a frequent occurrence. It was deemed necessary to make common carriers responsible for the safety of the goods entrusted to them, because if this were not done it would be in the power of the carrier to combine with robbers or to pretend a robbery or some other accident which the shipper was unable to investigate.

Bingham v. Roger (*6 W. & S. (Pa.), 495*).—The rule is reasonable because when the shipper entrusts his goods to a carrier he parts entirely with possession of and control over them and knows nothing of what takes place during their carriage, while the carrier, upon the other hand, knows, or has the means of knowing, everything which befalls them, and if they be lost or damaged, how such damage or loss occurred. Ordinarily a shipper would not be able to prove what happened to them except by calling the carrier or his employees to testify. Hence the law by commercial necessity and by public policy put upon the carrier the sole responsibility, with the exceptions stated. The rule was reasonable, furthermore, because the carrier could charge a rate of freight commensurate with the risk he assumed. The immense increase in the transportation of goods and merchandise, the immense value they often possess, and the immense distances which they are often transported, multiplied the difficulties of the shipper who sought to recover for a loss he sustained and added to the opportunities and temptations of a carrier who might carelessly or willfully violate his trust. While the dangers from robberies from without were lessened by the greater strength of the Government, the dangers of embezzlement, of larceny, and of collusion with thieves by those from within were greatly increased, and the carrier was naturally held responsible for the management of his own employees and the conduct of his own business, and required to adopt such measures as might be necessary to secure the delivery of the goods in safety.

The stringency of the common-law rule, while undoubtedly salutary, was an absolute one imposed by law without the act of the parties, but the courts began to hold that its force might be lessened if the carrier and the shipper so agreed. They held that the parties had the right to make a contract between themselves and modify the stringency of the common-law rule, provided the contract was just and reasonable and not against public policy. The law is thus stated: If the shipper and carrier agree, for some definite consideration, to limit the carrier's liability, this agreement is valid if the limitation is fair and just and not against public policy.

R. P. Co. v. Lockwood (*17 Wallace, 357*); *Santa Fe Ry. v. Grant Bros.* (*228 U. S., 177*); *Pierce v. Wells Fargo* (*236 U. S., 278*).—It has been held that the carrier may contract with the shipper for exemption from any liability for loss or damage to goods and merchandise occurring from certain agreed upon causes—fire, for example—where these causes were without the negligence of the carrier or his servants. To support such a contract the agreement must be definite. The consideration is usually a reduced rate of freight.

York v. Central R. R. Co. (*3 Wallace, 107*); *Arthur v. Texas & Pacific* (*204 U. S., 427*).—It has also been held that the carrier and shipper may agree upon a definite time within which suit may be brought for loss or damage to the goods. For example, a time limit of 90 days after delivery has been held reasonable.

Mo., Kans. & Texas R. R. Co. v. Harriman (*227 U. S., 657*).—Since the Cummins amendment of March 4, 1915, hereinafter referred to, the period for instituting suit shall not be less than two years.

It has also been held that the carrier may agree with his shipper that notice of any loss or damage to the goods must be given within a certain agreed-upon time.

So. Pacific Ry. v. Stewart (*248 U. S., 446 (1919)*).—And the courts have gone so far as to hold that even if the amount of the loss could not be ascertained within the time agreed upon, that did not avoid the stipulation.

Until the passage of the Cummins amendment of March 4, 1915, the general rule declared by the United States courts was that a common carrier might by a just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed upon value made for the purpose of obtaining the lower of two or more rates of freight, and which lower rate of freight was proportionate to the amount of the risk.

Cronniger v. Adams Express Co. (*226 U. S., 490*); *Mo., Kansas & Tex. Ry. v Harriman* (*227 U. S., 657*); *Cincinnati & Texas P. R. v. Rankin* (*241 U. S., 319*); *N. Y. Cent. Ry. v. Beahan* (*242 U. S., 148*); *Amer. Express Co. v. Horseshoe Co.* (*244 U. S., 58*) (*pp. 62, 63*).—The Cummins amendment provides that where the goods were hidden from view by wrapping, boxing, etc., the carrier not being able to discover the character of the goods, and the carrier's liability would not then extend beyond the amount so specifically stated.

The Cummins Act of 1915 made a number of radical changes in the law of liability applicable to interstate transportation. Under the laws that existed

before the Cummins amendment, a common carrier in an interstate shipment could not limit its liability for its own negligence, but it could by agreement with the shipper fairly entered into limit the amount of its liabilty, whether caused by negligence or not. In other words, a shipper could undervalue his shipment in order to obtain a lower rate, provided it was agreed that transportation companies' liability in the event of loss would be limited to the value given. Such an arrangement was approved by the Federal courts.

The Cummins amendment in terms prevented the making of such an agreement and provided that such a contract was unlawful, and that notwithstanding any limitation, the shipper might recover the full value of the article where the loss was "caused by it" (the carrier). The quoted clause is the same as appears in the Carmac amendment, and has been construed to fix the liability of the carrier as it was at common law, which was a liability whether caused by the carrier's neglect or not, and not occasioned by the act of God or the public enemy or the inherent nature of the goods, but provided, however, that a carrier might limit its liability for a loss not due to his neglect by a fair and reasonable agreement based upon a proper consideration, usually a reduced rate.

The Cummins amendment act of 1916, amending the act of 1915, again changed the law and made certain changes and provided certain exemptions as follows:

First. Baggage carried on passenger trains and boats carrying passengers are not within the Cummins Act.

Second. Property other than baggage, concerning which the carrier has or shall be authorized or required to establish rates dependent upon values declared by the shipper, or agreed upon in writing as a reasonable value of the property, is not within the Cummins Act.

Third. Ordinary live stock received for transportation is within the Cummins Act.

Fourth. Property received for transportation concerning which the carrier has not been or shall not thereafter be authorized or required to establish rates dependent upon values declared by the shipper or agreed upon in writing as the value of the property, is within the Cummins Act.

Fifth. Live stock, such as is chiefly valued for breeding, racing, show purposes or other special uses, is not within the Cummins Act.

Accordingly as to classes 1, 2 and 5, the law is exactly as it was prior to the Cummins amendment, and this prohibits the carrier from exemption itself from liability for its negligence, by any agreement, but permits the carrier to limit the amount of its liability by an agreement with the shipper fairly entered into and based upon a reduced rate. As to classes 3 and 4, no agreement can be made between the carrier and the shipper which will limit the liability of the former or release it from the payment of the full value of the property, in case of its loss or destruction.

There have been no adjudged cases, which we regard as authoritative, since the amendment to the Cummins amendment, August 9, 1916, and what the decision of the Supreme Court of the United States would be upon an agreement between the shipper and carrier limiting the carrier's liability for a definite amount, is not possible to say. The probabilities are that if the agreement was supported by a definite consideration, such as a reduced rate of freight, it would be upheld.

Upon intrastate shipments.—When a shipment is within the borders of a particular State—that is, intrastate—the law governing the carrier's liability is that of the State within which the shipment is made and the carriage terminated. Generally speaking, in the absence of a special contract the common-law rule is in force, and the carrier's liability is that of an insurer, with the only exception of an act of God and the public enemy.

With respect to the carrier's right to limit his liability at common law when the shipment is intrastate, by making a special agreement with the shipper and the extent to which such limitation may extend, the statute laws of the several States and the decisions thereunder differ. Most of the States recognize the right of the carrier to limit his liability by a special agreement to certain causes, distinctly enumerated, none of which originate in the negligence of the carrier or his servants, but with a few possible exceptions the State laws generally deny the carrier the right to limit his liability for his own negligence or that of his servants. Some of the States allow a limitation of the amount recoverable, provided the rate of freight is a reduced one, and this whether the

loss occurs through negligence or not, while other States recognize such right upon the part of the carrier, provided the loss is without his negligence.

Upon an interstate shipment when the carrier fails to deliver.—When a carrier upon an interstate shipment fails to deliver the goods and fails to explain why he does not deliver them—that is, if he simply has no answer to make to the shipper's claim—and is unable to show what befell the goods, he may, by a special agreement with the shipper, have his liability limited to certain specific causes of loss, not occasioned by negligence, and to a certain specific amount, provided such amount has been agreed upon in consideration of a reduced freight rate. The carrier must have in reality two or more rates, and the shipper must have accepted the reduced one when agreeing to limit the carrier's responsibility. Generally speaking, a special contract providing for such limitation is binding under such circumstances, and should the goods not be delivered at all the carrier's liability is limited to the amount agreed upon in the bill of lading. This is the way the law stands to-day where the carrier is unable to show what became of the goods intrusted to his care.

Under the decisions of the United States courts it has been held that a limitation of the amount recoverable by a special agreement with the shipper is not really a limitation of the liability of the carrier, but simply a method of fixing an agreed upon value of the goods for the purpose of adjusting the freight rate and determining the amount which the carrier is to pay in the event of loss. Hence, therefore, no matter how the goods have been lost, whether by negligence or not, the amount recoverable may under these decisions be limited to the agreed upon value, but it is perfectly evident that such construction of the law puts a premium upon the carrier for silence. He can keep his mouth shut and depend upon the ground that he knew nothing about how the loss occurred.

Of course, if a carrier willfully holds on to the goods and refuses to deliver them, or if he actually delivers them to the wrong consignee, he is guilty of a conversion and can be sued in trover and made liable for the full value of the goods; but the mere failure to deliver, or the failure to deliver on demand, while evidence of conversion, is not conversion in itself.

Elsie Magin v. Dinsmore (70 N. Y. 410); Leo Utassy v. Barrett (219 N. Y. 420).—The reported cases upon the question of a carrier's liability for conversion are few in number, but they seem to hold that the burden of proving a wrongful conversion by the carrier is upon the shipper, but this is a burden almost impossible to meet, except in a clear case.

The general rule of law is that when a case is brought against a carrier for the loss or damage of goods, the burden of proof is upon the carrier to show that the loss occurred from an excepted cause (where the bill of lading so provides) and the carrier having proved an excepted cause, then the shipper, in order to recover, must prove that the cause was the result of negligence.

Clark v. Barnwell (12 Howard, 272); Transportation Co. v. Downer (11 Wallace, 129); Galveston R. R. v. Wallace (223 U. S. 481).—However, as a limitation of the amount recoverable, has been held not a limitation of liability of the carrier but merely a method of computing the loss, the shipper would be bound to show a wrongful conversion if he claimed one.

Upon ocean bills of lading; goods imported.—With respect to all contracts, the general rule of law is that their nature, obligation, and interpretation are governed by the law of the place where they are made. Sometimes the parties expressly contract at the time of making that the contract is to be construed by the law of some other place, or that it is to be performed in some other place and construed accordingly.

A contract of affreightment made in one country between citizens or residents thereof, and the performance of which begins there, is governed by the laws of that country, unless when entering into the contract the parties clearly manifest a mutual intention that it shall be governed by some other law.

Liverpool & G. W. Steam Co. v. Phoenix Ins. Co. (129 U. S., 397).—To this general rule there is an exception, that if the foreign contract of affreightment is against the public policy of the country in which suit is brought, that country will declare it invalid. For example, a foreign bill of lading covering a shipment of goods from a foreign country to the United States, if valid where made, will be held valid in this country, provided that its terms do not offend against the public policy of the United States or against the Harter Act, which applies to a shipment from a foreign port to a port in the United States.

Knott v. Bottomley Mills (179 U. S. 69).—Limitations of liability for negligence are contrary to the public policy of this country, and except in certain

cases, against the prohibition of the Harter Act. Hence they will not be enforced in our courts even if contained in an ocean bill of lading which is valid by the law of the country where it was made.

Liverpool v. Phoenix Ins. Co. (129 U. S. 397); The Kensington (183 U. S. 263).—As the courts have construed an agreement for the valuation of the property carried, based upon a reduced rate of freight, as not a limitation of liability for damage occasioned by negligence, but merely a method of determining the amount of the recovery a foreign contract of affreightment fairly made with the shipper, valuing the goods at a definite amount, is valid in our courts, provided that the carrier can not exempt himself from the consequences of his own or of his servant's neglect.

Hart v. Pa. R. R. (112 U. S. 331); Caldron v. Atlas S. S. Co. (170 U. S. 272); Adams Express Co. v. Cronniger (226 U. S. 491).—Furthermore, it has been held that such a limitation as to the amount of the recovery is valid, even in cases arising under the Harter Act.

Frederick Leland Co. v. Hornblower (256 Fed. 289); Mariani Bros. v. Wilson (117 N. Y. S. 335).—In our opinion, an agreement which provides that in the event of the loss or damage of the goods, the carrier shall be responsible for a sum vastly less than their value is in reality and effect a limitation upon the carrier's liability. It is true that such an agreement affords a plan for fixing the amount of the recovery, but when it fixes that amount as nominal, or even at a substantial reduction from the real value of the goods, it is putting a limit upon the liability itself. The case is analagous to that of an underwriter who admits liability for the loss he assumed, but claims so large a deductible average that the assured loses the real benefit of his policy.

Upon an ocean bill of lading; goods exported.—When goods are exported from this country under an ocean bill of lading to a foreign country, the shipment is subject to the laws of this country, including the Harter Act, and the act of 1851, sections 4281, 4282, and 4283, Revised Statutes of the United States.

Generally speaking, carriers by water differ in no essential respect from carriers by land, and in the absence of mutual agreement, carriers by water are liable in the same way as carriers by land.

Liverpool S. S. Co. v. Phoenix Ins. Co. (129 U. S. 397).—Ocean carriers can, however, limit their liability like carriers by land, against certain accidental causes, and also with respect to the amount for which they are liable in the event of the loss or damage of the goods shipped, and the act of 1851 grants to shipowners certain exemptions for the purpose of encouraging American shipping, and its amendment, the Harter Act, grants further exemptions, the latter particularly releasing the shipowner from liability for certain errors of navigation when he has otherwise complied with the requirements of the law. The shipowner can also contract for relief from his otherwise underlying duty of furnishing an absolutely seaworthy ship, provided he uses due diligence to make her seaworthy, and to properly man and equip her, but with these exceptions the shipowner can not limit his liability for the negligence of himself or his servants.

THE LAST DECISIONS.

The last important decisions which pronounce legal clauses limiting a common carrier's liability to an agreed upon value of the goods carried in consideration of a reduced rate of freight and a definite time within which claims must be presented against him are as follows:

Western Transit v. Leslie & Co. (242 U. S., 450 (1917)); Boston M. v. Piper (246 U. S., 439 (1918)).—With respect to limitations of value by land carriers.

Frederick Leland & Co. v. Hornblower (256 Fed. 289); Mariana Bros. v. Wilson (117 N. Y. S., 335).—With respect to ocean bills of lading.

So. Pacific v. Stewart (248 U. S., 447 (1919); B. & O. v. Leach (249 U. S.) 217 (1919)).—With respect to the limitations of a definite time within which claim must be presented, the last decisions are as follows:

While the several States of this country, with few exceptions, recognize the common-law rule of the carrier's liability, and prohibit him from contracting against his own negligence or that of his servants, some of the decisions recognized in the several States are as follows:

Maynard v. Syracuse, B. & N. Y. R. Co. (71 N. Y. 180); Wescott v. Fargo Steam Nav. Co. (61 N. Y. 155); Boyle v. Buck Terminal R. R. Co. (210 N. Y. 389–392); Kenney v. N. Y. C. & H. R. R. Co. (125 N. Y. 422).—In New York a common carrier may, by express contract, based on a sufficient consideration,

absolve himself from every degree of negligence on the part of himself or his agents and servants, no matter how gross that negligence may be, provided only that it falls short of misfeasance or fraud. But the carrier cannot exonerate himself by general words. Such exemption must be expressed in unequivocal terms, and he is not at liberty to hide the stipulation away under a form of words, however broad. Thus, general words, such as that "the carrier will not be liable for loss or detention or damage"; or, such as release from liability "from whatever cause arising"; or, "for damage occasioned by delays from any cause," will not relieve the carrier from the results of negligence.

In South Dakota, the code (sections 3886–3887) provides that the obligation of the carrier can be limited by special contract (section 3886), but cannot exonerate itself from gross negligence, fraud, or the wilful wrong of himself or servants (section 3887). The case of Meuer *v.* Chi. M. & St. P. Ry., 5 S. D. 568–69 N. W. 943, interpreted these sections as declaring that a common carrier could contract against its negligence and that of its servants, but not as against gross negligence, fraud, or wilful wrong.

Cen. of Ga. Ry. v. Hall (124 Ga., 302); So. Exp. Co. v. Hauban (134 Ga., 445).—In Georgia a carrier of live stock may contract against its negligence and that of its servants so that it will be liable only for gross negligence. This rule only applies to contracts for the carriage of live stock.

Doulan v. Southern Pacific (151 Cal., 763).—In California, by statute, a common carrier can contract against ordinary negligence, but not against gross negligence.

Checkley v. Ill. Central (257 Ill.); Abram v. Milwaukee, etc. R. Co. (87 Wis., 485).—In several of the other States, for instance, Illinois and Wisconsin, there are cases reported as holding that there is a distinction between ordinary and gross negligence, and as to the former a carrier may by special contract exempt himself, but not as to the latter.

Later cases, however, apply the general rule that a carrier cannot contract against its negligence or that of its servants.

There is a decision in West Virginia (B. & O. Ry. *v.* Rathbone, 1 W. Va., 87) which holds that a carrier can contract against its negligence. However, later cases decide the contrary and follow the common-law rule. (Maslin *v.* B. & O. Ry., 14 W. Va., 180; Brown *v.* Adams Express, 15 W. Va., 812.)

Proposed Amendment to Section 1 of the Harter Act of February 13, 1893, Thirty-Seventh Statutes at Large, Page 445, Chapter 105.

[Proposed amendments in italic.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved the 13th day of February, 1893, which reads as follows, to wit:

"That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement, whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, of proper delivery of any kind and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

be, and the same is hereby, amended to read as follows:

"That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports, to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge, *nor for any sum less than the full actual amount of such loss or damage, and whether the merchandise and property has been shipped at a reduced rate of freight or not, or at an*

agreed-upon value which is less than its actual value. Any and all words which or clauses of such import inserted in bills of lading, or shipping receipts, shall be null and void, and of no effect. *In the event of loss or damage the burden of proving freedom from negligence shall be upon the vessel and her owner.*"

Notice of all claims for loss or damage visible from a superficial examination of the merchandise or of the barrel, box, bale, package, or other container holding the same, shall be given the carrier before removal from the dock, and notice of all claims for loss or damage discoverable only by opening the barrel, box, package, bale, or other container shall be given the carrier within a reasonable time after the delivery of the merchandise to the receiver thereof, such reasonable time being determined by the nature of the merchandise transported and the circumstance of each case.

PROPOSED AMENDMENT TO THE CUMMINS ACT OF AUGUST 6, 1916.

[Proposed amendments in italic.]

AN ACT To amend an act entitled "An act to amend an act entitled 'An act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof and to enlarge the powers of the Interstate Commerce Commission, approved August 9, 1916.'"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of an act to amend an act entitled "To amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, approved the 9th day of August, 1916," which reads as follows, to wit:

"*Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

be and the same is hereby amended as follows, to wit:

"*Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for tansportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit the liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule

which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation: *Provided further, That where loss, damage, or injury occurs to property delivered to any common carrier, railroad or transportation company, the burden of proving freedom from negligence shall be upon such common carrier, railroad or transportation company, and where such loss, damage, or injury results from the negligence of the common carrier, railroad or transportation company, it shall be liable for the full actual loss, damage, or injury, and shall not have the right to limit the amount of recovery against it to any declared or released value of such property.* The term, "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

STATEMENT OF MR. WILLIAM D. WINTER, NEW YORK, N. Y., THIRD VICE PRESIDENT OF THE ATLANTIC MUTUAL INSURANCE CO.

Mr. WINTER. The company I represent being a mutual insurance company, and the only one in the United States, we have pursued a somewhat different policy from the stock companies. Up to two years ago we absolutely refused to admit liability for theft and pilferage.

Mr. EDMONDS. You mean the only mutual company in the United States doing marine insurance?

Mr. WINTER. Yes; pardon me.

Mr. EDMONDS. I just wanted to correct that.

Mr. WINTER. Yes; thank you, Mr. Edmonds—the only marine insurance company on the mutual plan. We took the position up to that time, that the marine insurance policy did not cover theft and pilferage losses and we refused absolutely to admit any liability. This was not done from any lack of desire to protect the merchants of the United States, but simply from the viewpoint that to admit liability for that risk, introducing that risk into the marine policy, would shake the whole basis on which transportation was then done. We felt, and our feelings have been justified by the result, that when a marine insurance company attempted to assume liability for those losses, which we felt should be a burden solely of the carrier, it would break down all the care that the carriers were then using for the protection of the shipments in their custody. We found that many of our assured suffered losses by theft and pilferage. It was not very great at that time, but they did suffer it, and they were coming to us and asking us to pay them. We refused and told them it was the carrier's liability and we sent them back to the carriers. It used to be that the carriers would respond, but, when they could not get recovery from the carriers, we were inclined at times to make good the loss—not admitting any liability, but just as a matter of fair dealing with our merchants, the company working on a mutual plan.

It came to pass that the steamship companies introduced these limited value bills of lading, under which they contracted out of their liability, assuming only a small measure of liability for goods in their custody. The result was that our customers came to us and said they could not get along without specific insurance against the

risk of theft and pilferage. We were forced into it, to be frank. We still insisted it was the wrong thing to do from the merchant's standpoint and that, in the last analysis, he would be worse off by insuring that risk than he would be in carrying it or insisting on the carrier carrying it.

The results have justified our feeling in that respect. I have some statistics here which I will simply speak of in a general way, because our company, conducting its operations on a mutual basis, it is not possible to compare the premium figures unmodified with the loss figures, because of the fact that dividends are declared and paid back to the assured. But we found in the beginning of 1918 that the losses presented to us were becoming so great in number and so large in the aggregate, that the only thing that we could do was to start charging a premium for the coverage of this hazard. We figured out rates that we thought would be adequate, and the results of the first year of doing that we found were very disastrous—the losses were far greater than the premiums we received. At the beginning of last year, we materially increased the rates, thinking that we could keep abreast of the losses: but we found at the end of this year, when the statistics were drawn up, that again we had made a serious loss, and we have found it necessary at the beginning of this year to advance our rates to a point where we feel the condition is so serious that the risk is almost becoming a noninsurable hazard.

When it becomes necessary to charge rates of 5, 6, 7, 8, and even 10 per cent to cover a hazard, there is something basicly wrong. No such hazard should exist and there must be a remedy for it; and I am down here to advocate, as Mr. Rush is, a remedy of fixing the responsibility more definitely on the carriers and to get back to their old responsibility, which they have been permitted by statutes and decisions to contract themselves out of. Now, we do this not with any feeling that the carrier should be unduly charged with responsibility, but we do feel that the carrier is the only one who has the control of the goods and is the one to insure the goods when they are out of the control of the shippers. Furthermore, unless the carrier exercises due diligence there is no chance of their goods arriving at destination.

Now, just to give you some side thoughts on the matter, we feel that it is greatly to the advantage of the American shipper, greatly to the advantage of the American shipowner, and greatly to the advantage of the country commercially as a whole for American exporters to be able to deliver their goods in sound condition at destination. No merchant takes insurance because he wishes to avail of the benefits of that insurance in dollars; he takes that simply as an indemnity against possible loss. What he wants to do is to deliver his goods sound in the foreign country. If the American shipper can do that, he will get a lead over his foreign competitors; and the whole attitude of our company and the attitude we are advocating is to do what we can to prevent goods arriving at foreign ports pilfered, broken, leaked, or otherwise made unfit for the market for which they are intended. We feel that insurance against this risk only tends to increase the hazard, because it is inevitable, it is only human nature, that when a merchant has insurance against a risk he will become less keen about pursuing his remedy, such as

it is, against the carrier, and the shipowner, knowing there is insurance on the commodity, will strive in every way possible to gain the advantage of that insurance and to forego, if he can, his responsibility for the shipments in his custody.

Now, just along this line, in addition to theft and pilferage, at the present time there is great urgency to cover fresh-water damage, damage due to contact with other cargo, damage due to poor stowage. Now, all of these things, if they be insured against and the underwriters are responsible because of these hazards, we do not want to do it and are not going to do it unless conditions become such as to force us into it, because we feel it is simply again breaking down the responsibility of those who should be charged with those losses. If we cover fresh-water damage, the carriers are going to be less diligent in seeing that the goods are protected on open wharves or while they are being loaded into the vessels. If we cover damage due to poor stowage, the carriers will be less careful about stowage, and it is a fact that stowage has become very bad, owing to the tremendous increase in the growth of our merchant marine and with our impossibility of quickly training up a body of experienced and efficient stevedores. All of those things have been in a measure the outgrowth of the war and the tremendous increase that we have had in our merchant marine. And unless that responsibility continues to rest where it should rest—I am speaking now of the things other than theft and pilferage—we will find in a few years from now that the theft and pilferage situation will be repeated in connection with bad stowage, fresh-water damage, breakage and leakage, and so we urge that the responsibility be placed where it can be controlled—not trying to throw any undue burden on the shipowner, but the shipowner is the only one who can control that hazard. The underwriter has no direct relation with the shipment, as you well know. We are only third parties, acting as indemnifiers of one of the primary parties to the transportation contract. Anything we can do must be done through the shipper; and it does seem so clear, from a national standpoint, from an economic standpoint, from any standpoint of fair reasoning you wish to look at the matter, that the only sound way of making a definite improvement in this situation is to let the burden rest where it can be controlled, and that the burden can only be controlled by those in whose custody the property is being transported, that we urge the responsibility should be placed on the carrier.

Just to show what happened in relation to theft and pilferage, with respect to the Atlantic Mutual Insurance Co.—and I have had to revise these figures in order to bring them down to a comparative basis, by allowing for the dividend that has been returned to the assured—I will state that in 1919 and 1920, the Atlantic Mutual Insurance Co. took in, net, $469,609 in theft and pilferage premiums; and they paid out, against that, in losses that have been presented to the company by the 1st of March, 1921, $536,773—or they paid out more than they took in by $65,164. No allowance is made here for the cost of operating the company, and it would not be unfair to add, as a pro rata share of the overhead applicable to this theft and pilferage, say $75,000—which would show, over the 2-year period, a loss of $140,000, notwithstanding the fact that during that

period we had made drastic revisions of the rates to endeavor to keep up with the increase in losses, because month after month we found that the number of claims being presented were increasing and the aggregate amount of those claims was increasing.

Now, in those figures we have not included losses by nondelivery, because in our method of statistizing we do not consider that as theft and pilferage losses. I have no figures to show how much that loss is, but the premium that is developed here for theft and pilferage was supposed to be sufficient to take care of these nondelivery claims that do not appear here, notwithstanding at the present time it shows $140,000 net loss.

And, furthermore, let me point out that while we can determine exactly the premiums received, it is impossible to know what the losses against those premiums will be for months afterwards; because claims come in five and six months and sometimes a year after the shipment leaves these ports. So much for the results from that point of view.

This statement is considered from the point of view of our assured, and it is only fair to state that we find there is a difference in shippers. Some shippers have very bad theft and pilferage records; others have good ones. Some of that is due to chance; in other cases it is due to poor packing and poor methods of handling. That is something that the underwriters, as underwriters, have striven to correct, but with only partial success. But were the responsibility absolutely on the part of the transportation companies, I do not see why it would not be possible for them to do a great work in the improvement of the packing, in that they could refuse to receive shipments not properly packed. They could at least have them recoopered or reboxed before they were sent forward.

Now, we can look at the results of our business from another standpoint, that of the commodity, and we find from analyzing losses from the viewpoint of the commodity—and we have done it somewhat on the system of calculation that the railroads use—as to the products of agriculture, which in large measure take in bulk articles, like grain, cotton, lumber, logs, and those things, with only a small percentage of stuff like dried fruits and nuts and green fruits which will be classed in the products of agriculture, that the results there are good; there is not much theft and pilferage except in those special commodities of which I speak—dried fruit and nuts and green fruit. We find there is a tendency to take them, naturally, because it is something that appeals to the desires of the men working on the docks and in the ships.

The products of animals are good, with the exception of the manufactured products, packing-house products, and especially canned and bottled goods, which show unfortunate results with us. The larger packages, such as salt meats and sugar-cured meats and those shipped in barrels and such things, show rather good results.

The products of the forest, such things as lumber and products of that kind, show uniformly good results.

Products of the mines also show uniformly good results.

But when we come to the products of the manufacturers, there is the rub, because it is there that the great losses are suffered, at least by our company; and I think it would be found generally with

all the companies that on those products of manufacturers the losses are heavy, because those are the things that are desired. And in those products of manufacturers you will find that the things that appeal most to the individual—shoes, stockings, underclothing, hats, suits, and such things—produce most of the pilferage losses.

Now, the losses can be looked at from a third viewpoint, that of the routes of shipment. It is and has been a rather astounding thing to us—and I cite it because it is so remarkable—that we find that the business which we do out of the port of New York, both outward and inward, produces an undue share of loss. It is true that out of the other ports, Boston, Philadelphia, Baltimore, New Orleans, and the west coast ports, to the Latin-American countries, losses are produced; but it is a fact that on shipments out of New York to all ports of the world, or on shipment from all ports of the world to New York, there is a constant flow of loss. The reason for this can only be left to speculation, but it is our feeling that there is not the same specific protection in that port that there is in the other ports of the country, due largely to the fact that it is almost impossible, as far as we can find out, to obtain conviction of those who are caught red-handed in the act of stealing goods.

I cite those three angles just to show the ramifications of the problem. You have the problem from the viewpoint of the shipper, the problem from the viewpoint of the kind of goods he ships, and the problem from the viewpoint of the routes over which the goods are shipped; and I can not help but feel that the control of that is largely—not finally but largely—in the hands of the transportation companies, in that they can control what they receive and the condition in which it is received, and they can control both at the point of origin and the point of delivery, the care and custody of that property.

Now, it is not only theft and pilferage and nondelivery that has increased so markedly, but leakage has increased enormously. And here, too, I think the carrier could exercise a wholesome influence in seeing that the goods he received were properly packed, and stowing them properly after he receives them. We have done a leakage business for a great many years, because the leakage question is an absolutely different one from the theft and pilferage question.

Theft and pilferage is a moral problem, absolutely; but in the shipment of liquids there is and always has been a normal usual loss and in the event of sea peril, stress of weather, or stranding or collision there have been losses due to fortuitous causes which underwriters are content and willing to bear. But we had had enough experience in that business to be pretty sure as to the proper rates to charge on varying commodities. But we found, in the year 1920—we only kept statistics in that year in detail—that the net premiums for leakage only, after allowing dividends, were $73,103 and the losses $110,380, showing a net loss of $33,277. With allowance for overhead expenses prorated over this particular part of our business, which would be fair to place at about $12,000, it would make the net loss for the year on the leakage business, say, $50,000.

Now, this was due to a variety of causes, but the two outstanding causes, as we found them to be, are that invariably the packages of goods are received by the transportation companies in bad order and

taken in bad order, if you will, and poor stowage, putting heavy cases in places where they are not only not safe from the point of view of the package and goods themselves, but also put in places where they were an absolute detriment to the other cargo in the shipment. Now, that storage is something absolutely in the control of the carrier. The poor packing is only to an extent in the control of the carrier. We believe that part of this particular loss (which I do not cite as a moral loss at all or one that concerns a moral hazard) will remove itself in time when in foreign countries it is possible to get better containers; but, at the same time, we do feel that this hazard has been greatly increased due to the inefficient manner in which the goods were transported.

I am absolutely in sympathy with Mr. Rush's remarks and in sympathy with the suggestions which he makes for the amendment of the Harter Act and the amendment of the Cummins Act, because we believe absolutely that that is the only way of making a real impression on the hazard as it now exists; that that is the only real way of reducing the cost of this loss, because it is an absolute economic loss to this country, and it has an absolutely bad influence on the extension of our foreign trade. The underwriters can go on increasing rates if they will, but I think they would rather and will, if necessary, cease insuring. But the thing to do is to control the matter so that the economic loss will stop, so that the cost that is now imposed on foreign trade will stop, and this cost can be reduced, at least, if it can not be altogether eliminated. We ask that this matter be considered by the committee—the amendment of these two acts—from the viewpoint of our national standing in the world. If we can get to the point where American merchants can deliver their goods in foreign ports in better condition than can our foreign competitors, why, we will get the markets and we will make a greater profit, because we will have that less cost; we can get in and quote a less price because we have that less cost, and the country, it seems to me, that can first get some solution of this terrible problem will find that the result has been well worth the effort. And if it does for the moment, while we are readjusting, cause undue hardship on one particular part of those who are engaged in overseas commerce, yet from the point of view of all and from the national viewpoint it will be well to go through that slight period of readjustment.

Mr. LEHLBACH. Mr. Winter, if your company pays a loss due to negligence in the act of an agent of a shipowner, for which he is liable, do you enjoy the right of subrogation?

Mr. WINTER. We do enjoy the right of subrogation.

Mr. LEHLBACH. Practically, as a matter of practice?

Mr. WINTER. As a matter of practice, we find that most shippers, after we have made settlement with them, are rather loath to go to the trouble, and it is a great deal of trouble, in pursuing their remedy against the carrier, for the remedy must be pursued through them. We have no direct action.

Mr. LEHLBACH. But you do not contract that they shall do that to your interest?

Mr. WINTER. Absolutely; we always insist on it and we keep following them up. The cases are never closed; we keep after them

and after them and after them. But I merely state it is human nature, when you have been reimbursed, not to want to go to additional trouble to get your money out of the carrier.

Mr. LEHLBACH. Do the bills of lading actually reverse the normal liability in that respect by specifying, if the shipowner is liable to the shipper for a loss, that if the shipper collects from the underwriter he must apply that to what he expects from the shipowner?

Mr. WINTER. Some bills of lading do, sir; they claim the benefit of any insurance that may be on the commodity.

Mr. LEHLBACH. Is that kind of a contract in accordance with public policy?

Mr. WINTER. It is not; it is absolutely against public policy.

Dr. HUEBNER. Is it also against public policy for a bill of lading to specify that the carrier is not liable for anything that can be insured against?

Mr. WINTER. Absolutely.

Mr. EDMONDS. I was wondering whether you would call the loss of whisky leakage or a moral loss. [Laughter.]

Mr. WINTER. Now, that you have raised that point, a difficulty arises in the shipment of whisky in bottles, as to whether the loss is due to breakage or pilferage; because the method used in pilfering whisky in cases is to drop the cases and then to hold a container under the case and catch the drips. [Laughter.] There was also a case that happened on the New York docks, where whisky had been sent—it may not have been whisky, but liquor of some form. It was sent in casks and lay on the docks, and during the daytime the river pirates located the casks on the dock and, after dark, they came down with boats, under the dock, bored a hole through the dock and into the casks and, with their containers, emptied the casks. There are various ways of doing it.

Mr. EDMONDS. That is leakage, isn't it?

Mr. WINTER. That would be a claim on the underwriter, I think, as pilferage; because it would show the case had been approached from the outside. That would not be considered as a leakage loss.

Mr. LEHLBACH. Can the river pirates operate, as in the example you have given us, successfully operate, without the connivance of employees on the docks?

Mr. WINTER. I think not. And I am also of the opinion they can not operate very long, except with the connivance of the police authorities.

Mr. EDMONDS. Do your New York laws require the dock should be kept open at all times for access to the public?

Mr. WINTER. I do not know as to that.

Mr. EDMONDS. Can the owner of the pier close the same and not allow anybody on it?

Mr. WINTER. I can not answer that question.

Mr. EDMONDS. Will you try to find out and let me know? I find there are different laws in different States and I have never gotten a complete compendium, and I would like to know.

Mr. OSBORN. I think it would depend on what dock it is. I have had occasion to look into that on certain docks, and I have found they could protect the docks.

Mr. EDMONDS. I would be very glad, indeed, if Mr. Winter could furnish the information as to the New York docks. I find in Phila-

delphia we have to keep watchmen on our docks, and if a man can show he has business with the ship, or anything like that, he has to be allowed on the dock at any time—day or night.

Mr. LEHLBACH. In speaking of losses from theft and pilferage and nondelivery, you have pointed out the many losses due to the destruction or disappearance of the commodities themselves. Can you suggest for the record indirect losses that result, such as losses resulting from delay, inability to fill contracts, loss of trade, and other elements?

Mr. WINTER. Why, yes; I could. It quite often happens that contracts are canceled because of the fact that on arrival at destination parts are missing. For instance, machines that have brass fittings that are small and removable often arrive at destination with those brass fittings removed, and resulting sometimes in the abrogation of the contract. In any event, it serves to delay the carrying out of the contract of sale. That condition has become so bad that it is customary now to ship those brass parts in separate packages in such a way that they will not be noticed and the shipments go forward minus those parts, which follow either on the same ship or on a later ship. I think in one particular case, where some motor trucks were sent to Copenhagen and return from there they came back with all the removable parts on those motor trucks, the lamps, horns, and everything small and removable and salable, taken off. The result is, you can see for yourselves, any goods arriving at destination in such condition as that are not salable and result oftentimes in loss of the market; because maybe by the time the missing parts can be forwarded market conditions have so changed that the commodity is valueless in that market.

Commissioner LISSNER. You stated, Mr. Winter, that many losses were due to the inexperience of stevedoring companies in handling cargo. I am informed by the representatives of the Shipping Board that in our work inexperience results from newly organized stevedoring companies. Have you any observation to make in that regard?

Mr. WINTER. You mean by newly organized stevedoring companies those that have been organized to meet the demand of the last few years?

Commissioner LISSNER. Yes.

Mr. WINTER. You mean by newly organized stevedoring companies which have had long experience; and the head of one of those companies could almost build a ship himself from beginning to end. Those men would know how to stow cargo in a ship so that it would be in a sound condition, so that even if the ship met heavy weather the cargo would not shift. It is a real science stowing cargo in a ship so that the cargo will not move when the ship encounters heavy weather, such as is encountered on the North Atlantic in the winter.

Now, it is apparent that those men can only become experienced through a long training. And there has been such a great increase in the need of those men that, of course, many inexperienced stevedores have loaded vessels, with disastrous results.

Commissioner LISSNER. Has anything practical been done with regard to a training school for stevedores; or is that a practical suggestion? It is expensive, is it not, for them to get their experience in actual work?

Mr. WINTER. It is pretty expensive; but that is the only sound way. They could get a great deal of theoretical knowledge in that way which would be valuable. School training would be valuable to that extent, just as school training is valuable to the skippers and crews of our ships. But it does not give them the actual shop experience, if I might use that word; they need the apprenticeship in doing the actual work.

Commissioner LISSNER. Is there anything essentially vicious or undesirable in regard to this method of organizing subsidiary stevedoring companies?

Mr. WINTER. I do not know what answer to make to that question, because I do not quite know what the purpose of the question is.

Commissioner LISSNER. Well, I am simply asking a question that was suggested to me; I do not know much about it myself.

Mr. WINTER. I do not, either.

Mr. EDMONDS. I think it simply means this: They have a number of operators of allocated ships in the Shipping Board, and these operators have organized subsidiary stevedoring companies.

Mr. WINTER. I guess that is it.

Mr. EDMONDS. I suppose he means to ask if it is a vicious practice to allow these operators to organize these subsidiary stevedoring companies.

Mr. WINTER. Well, I think it is a vicious practice in that it tends to a breaking down of the care that is taken in loading vessels. For instance, if you had an operating company that was not of the highest class, the probabilities are that the subsidiary stevedoring company would be of the same class. And just to give one example—I do not like to mention specific cases or names—but take the steamer *Posland*. There is a case that has been so widely discussed in the newspapers that you all doubtless know what has happened. Now, we have absolute information that the cargo supposed to have been stowed in the bottom of the *Posland*, that could not have been touched between the time the steamer left New York and the time she returned to New York, was pilfered by the stevedores at the time of loading—there was no way of getting at that cargo during the voyage out or the voyage home—and that that cargo was broken into and some of it taken out from the lower tiers, and the cases came up empty or partially empty. Now, that is one illustration of what unified control may lead to.

Mr. LEHLBACH. I suppose everybody knows about the *Posland* and the incident that you refer to, but will you state for the record, briefly, what it was?

Mr. WINTER. Yes. The steamer *Posland* was operated by the Acme Navigation Co., and owned by the Polish-American Steamship Co.; it was one of the Shipping Board vessels that was sold to the Polish-American Steamship Co. As you are doubtless aware, the conditions in Cuba last summer were such that it was impossible to get the number of vessels to go to Cuba that the Cubans thought they needed; they did not really need so many, as it turned out, but they thought they did. And the result was that more ships were sent to Habana than there were facilities at the port for discharging. The steamship *Posland* sailed in the month of August with a very valuable cargo, worth, I think, roughly, about $5,000,000. She went

down in normal course and was about a month in the port of Habana, and was unable to obtain lighters or a berth at which to discharge. Some misrepresentations, I think, were made to the Department of State, and the vessel was permitted to return to the port of New York, her hatches not having been opened.

The bill of lading in that case was a very wonderful document—very unusual. It gave them the right to return this cargo to New York. In fact, it was rather indicated that that was the original intention; that when the boat left New York there was no apparent chance of any discharge at the port of Habana. It also provided for payment of a fee for discharging at Habana; also for demurrage at Habana; and it also provided that in the event of the vessel returning to New York, return freight would have to be paid.

When the vessel arrived at New York a shippers' committee was organized, with counsel, in order to protect the interests of those who had cargo aboard; and the operators refused to release the cargo until the charges had been paid. The freight out and these charges at Habana had been paid in advance, but the return charges the operators insisted on collecting before the cargo could be outturned from the vessel. The shippers refused to do this; but finally it was arranged that bond should be put up for the payment of this return freight, if it was finally adjudicated that it was due; and the cargo was released after a great deal of delay.

When this cargo came out, as I have mentioned, a great deal of it was found to have been pilfered, some of the cases being absolutely empty and others only partially empty. Some of them looked as though the goods had been willfully destroyed, without any real desire to get at them. But it was also shown that those who had done the pilfering had had plenty of time in which to do it; that it had been scientifically done; because cases that had been absolutely unmarked and would show no trace of their contents, but which were the most valuable cases, were those that were pilfered; the shoes and razors, and all of those things which are small in bulk but large in value, were taken, showing that those who had done the pilfering had had absolute access to the manifest of the vessel and were in collusion in some way with the people who were interested in the vessel.

That case has gone to the courts, and only last week a decision was handed down in the district court for the southern district of New York holding that the vessel and the operators—the vessel had been libeled—were liable for the theft and pilfering and other damage that had ensued, because of the fact that there was an unexcused deviation.

That is perhaps the most outstanding and the most vicious case of theft and pilferage that has come to light so far.

Mr. EDMONDS. Mr. Winter, was there anybody arrested in connection with that case?

Mr. WINTER. So far as I know, no one has been arrested.

Mr. EDMONDS. Well, this was a Shipping Board vessel operated by the Acme Navigation Co., was it not?

Mr. WINTER. No; it was built for the Shipping Board, but I think it was a free boat, owned by the Polish American Steamship Co. I simply mentioned that it was a Shipping Board vessel to show that it was one of the big, new type boats.

Mr. EDMONDS. There was no investigation to show whether the officers and crew were responsible?

Mr. WINTER. So far as I know, there was not. There may have been, but I do not know of it.

Mr. EDMONDS. Or any investigation made of the owners?

Mr. WINTER. Well, there was an investigation made of the owners, but I am not sure whether that was an official investigation, or whether it was an investigation by the counsel for shippers and the underwriters. But it was shown that they had had various other dealings; that they had been an operating company in New Orleans, and had left there rather hurriedly without explanation; but their hasty exit could be explained on account of irregular methods. And the whole proposition seemed to have been cooked up in advance.

The steamer *Cracow* was also a rather unusual case. This vessel was dispatched by the same operators, the Acme Navigation Co., and went down to Cuba, the same port, under the same conditions, and was not able to discharge. I think perhaps there had been a little discharge made, but very little; and then suddenly the vessel took fire and was completely destroyed. Now, it is very hard to get definite evidence; but from what is known it is quite evident—it is like one of those Scotch verdicts, "Guilty, but not proven"—that the destruction of the vessel was brought about in order to cover up the theft and pilferage that had been going on in the hold. That boat was discharged by the same operators.

Mr. EDMONDS. Was there any criminal prosecution in that case?

Mr. WINTER. So far as I know, there was none. That, of course, happened in a port of Cuba.

Mr. EDMONDS. They did not make the captain manager of the line afterwards, did they? [Laughter.]

Mr. WINTER. I do not know.

Mr. EDMONDS. It seems to me that he would be a good man to manage for some New York people that I know of. [Laughter.]

Mr. WINTER. For some purposes, he would be excellent.

Mr. EDMONDS. I suppose this question really resolves itself down to the honesty and the good intentions of the operator?

Mr. WINTER. Yes: it does, in a measure. But how can you have honest operators and honest shipowners if they can contract themselves out of a liability that should be theirs?

We are advocating this strict liability on carriers so that there shall be one law for all; it is partly for that reason that we are advancing this; so that an operator could not make shipping contracts or issue bills of lading such as were issued in the cases of the *Cracow* and the *Posland*. It is always unfortunate that the law must press equally hard on the guilty and those who are not guilty; but you can not make fish and fowl of the same thing. It is absolutely necessary to have a definite, clear-cut legal status. This suggested amendment to the Harter Act, I feel, is only restoring what was the original intention of the Harter Act. Of course, the Harter Act has been so changed by legal decisions and statutes that it has not served the original and intended purpose.

Mr. EDMONDS. Does this Polish-American Steamship Line belong to the American Shipowners' Association?

Mr. WINTER. I do not know.

Mr. CAMPBELL. I would like to suggest, Mr. Chairman, that that case ought not to stand as an example of the American shipowner, or the Shipping Board operations; and I think inasmuch as the committee has gone into that case, in order to have your record fair to all, you ought to go further into the matter.

Mr. LEHLBACH. You will have that opportunity.

Mr. CAMPBELL. I am not speaking of that ship: I do not know anything about that. But I do not think the record ought to stand merely with a statement as to the case of that ship. That was a most extraordinary case, with unusual people: and it is not a fair example of the American shipowner.

Mr. WINTER. I want to agree with Mr. Campbell that that was not a fair example of the American shipowner; but it only shows that those who want to go that far can do so and get away with it.

Mr. EDMONDS. I will agree with Mr. Campbell also.

Mr. WINTER. And it is no reflection on American shipowners. Far be it from me to reflect on them.

Mr. LEHLBACH. But it is an example of what is possible under present conditions.

Mr. WINTER. It is.

Commander LISSNER. I would like to ask whether you have noticed any difference in efficiency in stevedoring between the handling of Shipping Board vessels and the handling of other vessels.

Mr. WINTER. Well, I can not speak by the book as to that. But I do know that the old-established companies, of course, had the old-established stevedores engaged with them, and that it was inevitable in operating the Shipping Board boats that new crews, new captains, new stevedores, etc., should be taken on. In that way the Shipping Board boats have been handicapped—not through any fault of the Shipping Board, but merely because of the very conditions that existed. With such a comparatively small American merchant marine there was a comparatively small number of stevedores; they were all engaged up and continued mostly with their old connections, except as they were able to develop and take on new and additional lines.

Mr. LEHLBACH. Are there any further questions of Mr. Winter?

Mr. GAINES. I would like to ask one. Do you regard all insurance which indemnifies a man against his own wrongful act or criminal negligence as being against public policy?

Mr. WINTER. Against his own?

Mr. GAINES. Employers' liability; insurance against liability for his own negligence; would you regard that as being, as you say, against public policy?

Mr. WINTER. I would only go to a certain extent in that respect. It is impossible for the owner of a factory, for instance, to exercise the same sort of control all along the line that he would exercise if it was but a one-man factory; a factory such as they had in the old days, which consisted of one or two men. Then it was absolutely possible to control what went on. But when you have a factory that has more than 20,000 people, I do not think you can lay down the same measuring stick for that that you could for the old-style factory.

But I do think that any insurance that undermines the responsibility of those who are, under the old common law, liable for what happens is tending against public policy.

Mr. KIRKPATRICK. That is true, however, in all automobile liability insurance, is it not? There is a one-man operation there.

Mr. WINTER. That is a one-man operation. I do not know much about automobile insurance.

Mr. KIRKPATRICK. But it is recognized as not against public policy to grant automobile liability insurance everywhere?

Mr. WINTER. Yes; and it is very unfortunate in some respects that certain operators can get such insurance. I think in the long run you will find that there is a measure of assuming risk there that is against public policy. If it were not possible so freely to get automobile liability insurance, there would be less loss. It is very hard to draw the line, because you get into cases that are very different.

Mr. LEHLBACH. Of course, negligence in automobile operation runs very frequently into the criminal, and there is no indemnity against the criminal law.

Mr. WINTER. No; of course not.

Mr. LEHLBACH. Does your company use the loan receipt against losses to obviate the carrier obtaining the benefit of insurance under the bill of lading?

Mr. WINTER. We do.

Mr. LEHLBACH. Is it effective?

Mr. WINTER. And we furthermore have been induced to insert a clause in our policies to prevent the carriers from exercising that right, which they try to claim, of getting the benefit of insurance. We have a contrary clause.

Mr. LEHLBACH. That nullifies any such overtures on their part, and it is a fight between the bill of lading and the insurance contract?

Mr. WINTER. Yes; and the insurance company, you see, is doing that in order to preserve the rights of the shipper against the carrier.

Mr. LEHLBACH. Will you explain the operation of such a loan receipt?

Mr. WINTER. Well, under the loan receipt, a merchant makes claim on his underwriters. The underwriter claims that it is a ship's liability, or a carrier's liability; he denies liability for the loss to the assured. But in order to put the merchant in funds so that he may again proceed with his business relations, the underwriter advances a sum of money—part, usually, of the claim made—under a loan receipt which does not admit liability, and under which the merchant agrees in the event of recovering from the carrier to reimburse the underwriter for the loan made. There is no admission of liability; it is just a device for continuing the relation between the assured and the carrier, but at the same time enabling the assured to go on with his business while the question is being litigated.

Mr. LEHLBACH. And in turn, bills of lading sometimes contain this provision:

> That the shipowner or operator shall have the benefit of all loans the amount of which have been determined by the total amount, or part of any damage to said merchandise, made to the owner by the insurer thereof and induced by the existence of insurance upon said merchandise.

Mr. WINTER. I believe such clauses are in bills of lading; yes.

Dr. HUEBNER. And what happens in that case?

Mr. WINTER. I think in that case the steamship company would have a great deal of difficulty in finding that the loan had been made. [Laughter.]

Dr. HUEBNER. Mr. Winter, have you found a big difference between different carriers, in the amount of losses, aside from your distinction of those who are old operators and those who are new operators?

Mr. WINTER. Yes; there are certain lines that do not have the proportion of claims that other lines do. There is a marked difference in the care given property in the custody of the carriers.

Mr. EDMONDS. Do you think the proposed dual bill of lading, having one bill of lading protected and the other open, would be practicable?

Mr. WINTER. I do not. I think, just as Mr. Rush said, that the bad bill of lading would drive out the good one. I think it would be an unfortunate thing to have two sorts of bills of lading; we would merely work back to about where we are to-day if that was done; because, really, the bill of lading that would be used would be the cheap bill of lading; that would drive out the full liability bill of lading.

Mr. LEHLBACH. Do you think the situation could be cleared up by a voluntary arrangement between the operators and the underwriters, or do you think legislation is necessary?

Mr. WINTER. I think legislation is absolutely necessary.

Mr. LEHLBACH. Could legislation be supplemented by voluntary agreement or reformation in the methods of doing business?

Mr. WINTER. Well, I do think that good could be done by conference between the various interests involved, so that we would get various angles on the case; but I do not believe much can be done in that direction until the vital principle is definitely fixed as to where the responsibility shall rest; I think it would be rather putting the cart before the horse. If we can definitely determine that the liability is to be in one place, why, then everybody can suggest means of controlling that liability and reducing it. But as it is now, to use the vernacular, everybody is "passing the buck."

Mr. LEHLBACH. Are there any further questions? We are much obliged to you, Mr. Winter.

We will next hear Mr. Robinson. Please state your full name, business, and address for the record, Mr. Robinson.

STATEMENT OF MR. WADE ROBINSON, MARINE INSURANCE BROKER, NEW YORK CITY.

Mr. ROBINSON. My name is Wade Robinson. I am a marine insurance broker; address, New York City.

The fact that hearings before this committee are being held and the statements of witnesses prove that enormous losses to merchandise in transit have occurred in consequence of theft, pilferage, nondelivery, breakage, leakage, hook, sweat and fresh-water claims, these losses are—in the absence of a major accident, described by the term "acts of God or perils of the sea"—ascribable purely to human neglect; that is, in the absence of such major perils loss would not have

occurred if merchandise had been properly packed, handled, and safeguarded during transportation.

The broadest word that may be used to describe the causes of loss referred to is carelessness.

Losses to merchandise in transit increase cost because the consumer is taxed through the premium charges in policies of insurance.

It is quite certain that extraordinary effort to produce and ship the almost unbelieveable volume of merchandise that was handled during the war, with the shortage of efficient help in all lines of endeavor, was productive of cheapened methods originally devised to expedite handling and shipping, and that the main thought governing export business was quick production and quick delivery, with the result that short cuts and careless methods were the inevitable vogue.

It might be argued that now that the war is over and demand has lessened and labor is plentiful and good packing material easy to obtain abnormal conditions would immediately right themselves, but conditions have not changed.

Shippers have learned bad habits, and the general business depression, coupled with the extraordinary overhead expenses, has produced a trade condition that has created an even greater temptation to carelessness and inefficiency with its resulting handicap in the form of costs represented by greatly increased insurance premiums.

The subject of export packing has been very ably dealt with by Mr. C. C. Martin in his address before the foreign trade convention recently held. In hs address Mr. Martin shows the importance not merely of adequate containers but also of proper packing of merchandise in a manner that will fit the governing circumstances of the route over which it will have to travel. He deals with the very obvious necessity of making the package suitable as respects size, weight, strength, center of gravity, and of protecting it against unavoidable exposures by adequate waterproofing and by such other reasonable means as will safeguard contents against damage from without as well as from within, and which will protect it as much as possible against thieves.

Mr. Martin refers to the fact that good packing is easily within the range of accomplishment at an expense that will show an actual saving over present inefficient methods, and he supports this contention by citing the fact that the Forest Products Laboratory of Madison, Wis., a Government institution which is a branch of the Foreign Service of the United States Department of Agriculture, during the war saved to the Government millions of dollars by redesigning packing cases for overseas shipments.

I think it will be freely admitted that there is an overabundance of poor packing and that a remedy which will prevent and at the same time teach the shipper to pack properly, is imperatively necessary.

It is apparent that a code of practice to govern packing can be devised that will serve as a minimum standard of packing quality.

Obviously this code can and should be prepared by the Government Forest Products Laboratory at Madison. This laboratory has at hand, already paid for, a vast amount of data and experience and skill developed as a result of the war, which can now be realized

upon as a form of salvage through the preparation of a code of packing practices.

The laboratory, of course, would be expected to prepare the packing code in conjunction with representatives of shippers and carriers and underwriters' surveyors.

I wish to state here that the establishment of a code of practice to govern packing is not in any sense to be regarded as mandatory or an obligation on the part of any manufacturer or shipper. It would be optional with him whether or not he adopts it, but it is expected that he would surely adopt it because of the saving in cost of packing, freight, and insurance.

The plan which I shall outline carries nothing in the form of an obligation that must be assumed.

If any features of the plan are objectionable to any interest they may proceed along usual lines the same as heretofore.

The consideration of packing is naturally the first thought in connection with the consideration of a shipment of merchandise in transit from point of shipment to point of destination, and while we have considered the character of package or container, we must also not overlook the elements of hazard which are embodied in the packing of a package; that is, in the method employed in placing the goods in the shipping container and the morals of the individuals charged with this duty. This is important when we consider the risks of theft, pilferage, and breakage.

It is not always easy to determine after arrival of a shipment, which has developed breakage or pilferage, whether the loss so caused was primarily due to faults in the packing room of the shipper or to faults that developed after the package had commenced its journey.

Reasonable certainty respecting proper packing and the morals of the individuals who do the packing, therefore, should be established by a reasonable system of supervision that will insure the employment of only skilled and honest persons in the packing of merchandise.

When merchandise starts upon its journey transportation is accomplished by means of various forms of carriers, such as truck, horse-drawn or motor, lighters, steamboats, canal boats, river and harbor craft of various types, railways and ocean-going steamers. During its voyage, therefore, the merchandise is in many ways exposed to all the special perils referred to, and inasmuch as all these perils are, in the absence of perils which are termed "acts of God or perils of the sea," solely due to human agencies, it is reasonable to assume that through the same human agencies, properly controlled, the special perils may be almost if not wholly eliminated.

Obviously it is also necessary to provide means to guarantee proper handling during loading upon the ocean carrier and the proper stowage in the hold of the ocean carrier, and also to see that in connection with stowage and general loading of the vessel the danger of loss through perils of the sea is not augmented in consequence of careless stowage, improper loading, or overloading.

When an ocean carrier arrives at its destination the process of discharge to shore or supplementary carrier in which the merchandise will continue its journey should also be subject to reasonable super-

vision in order to avoid the special risks referred to, and there seems to be no adequate reason for failure to exercise such supervision.

After merchandise has been discharged it will proceed to destination, which may be an interior city in a foreign country, and if its condition has been properly noted at time of delivery from ship's side, developments thereafter can be identified as a result of the quality of skill and care employed in transportation to destination.

If special perils are to be eliminated, carelessness must be eliminated all along the line of transportation, and there must be substituted a system that will insure adequate packing and adequate handling, and this system must begin to operate in the packing room or warehouse of the shipper and carry through to the very door of the warehouse of the consignee. No system which takes care of only a portion of the journey will be adequate.

It is reasonable to assume that another factor which has largely promoted loose and inefficient shipping methods is the success many carriers have had in evading responsibility through the introduction of clauses limiting, or in effect eliminating entirely carriers' responsibilities. This condition seems to have led carriers to accept freely merchandise in an utterly unfit condition, and they have withdrawn or failed to maintain usual and proper safeguards for the protection of merchandise intrusted to their care.

We must not lose sight of the fact that the term "carrier" is in fact a very board term. It includes many forms of carriers, principally supplementary carriers, and may even be correctly applied to individuals and agencies who have custody and handling of merchandise between warehouse shelf at point of shipment and warehouse floor at point of destination.

It has been suggested that a remedy for existing defects might be found in an amendment of the Harter Act and rigid enforcement of the same, by which the carrier would be prevented from, first, introducing clauses in the bill of lading at variance with the terms of the Harter Act; second, limiting value to a nominal sum.

A little consideration of this suggestion, however, reveals the fact that it would not do more than partially cure existing defects, because there is infinitely greater actual and potential waste and damage embodied in the make-up of individuals who make the case or container, pack the merchandise therein, carry it from floor to truck, from truck to lighter or ship, and from lighter to ship, from ship to lighter or shore, and thence by truck or other land conveyance to warehouse at destination.

The Harter Act applies only to carriers engaged in carrying merchandise from and between ports of the United States and foreign ports. A drastic amendment and rigid enforcement of the Harter Act against the ocean carrier could have no material effect upon all the other numerous agencies of transportation before and after delivery to and from the ship.

Legislation that seeks to regulate the ocean carriers alone would be unfair and unjust, unless the same legislation at the same time granted to the carrier a form of power that would enable the carrier to control all elements having custody of the merchandise before receipt by ship and after discharge from ship, and this power would have to be extended so as to include the packer and to enable the carrier to control individuals employed by supplementary carriers.

Manifestly the granting of such power to a carrier would involve legislation of an impossible character.

We must not too readily assume that all damage discovered in an arrived package occurred after delivery to and while on board the ocean carrier.

When we think of theft and pilferage and the moral hazard generally, we must bear in mind that the same is in proportion to opportunity, and that surely the probability of immorality is greater while the merchandise is land borne than while it is water borne, because of the greater incentive lyisg in the fact that the only market for stolen goods is on land, and the landman can more easily develop such a market than can the seaman.

Consideration of corrective measures brings as a very first thought a clear necessity, namely, that the corrective system to be just must be comprehensive.

It must apply in just proportion to all the contributory elements of carelessness, and must, therefore, apply not only to the steamship carrier but to all other agencies participating in the act of transportation.

At first blush this conclusion seems to present a picture of complications and small details so numerous as to inspire a quick thought that a real remedy is impossible or too difficult. Whatever effort is made it must be in proportion to the evil it seeks to correct.

An examination of the relationship of shipper, carrier, and insurance company reveals a condition that practically amounts to a state of three-cornered opposition.

The shipper seeks to evade expense in the matter of packing. The carrier seeks to evade responsibility for damage arising during act of carriage. The insurance company seeks to evade ultimate loss through collection from the carrier, thereby constituting itself a mere guarantor or surety back of the carrier instead of actual insurer, and by charging greatly increased rates of premium or declining altogether to issue insurance.

The merchant has saved on packing costs, according to his idea, and has accepted any form of bill of lading which the carrier has offered, without thought of his obligations under his contract of insurance, believing that if loss or damage is sustained he will collect from the insurance company.

The insurance company believes that the shipper by these practices secures for himself a saving in packing costs and freight rates at their expense.

Now, it is apparent that any attempt to correct the situation by legislation aimed at only one of the parties to the act of transportation will produce controversy and accentuate antagonism. If we are to achieve a state of harmony and profit for right doing we must devise as an alternative a purely optional system that will carry advantages of convenience and lessened costs so important that it will induce adoption by all.

In a statement recently made before the House Committee on Merchant Marine and Fisheries, Mr. Fields S. Pendleton said:

> For American ships to succeed in foreign carrying they must be fortified in some way to meet cheaper foreign competition. This necessitates a protective governmental policy. The preferable policy is one that will create such a preference for the American ships in carrying foreign commerce as to compel shippers to use it.

My suggestion is that there be two forms of bill of lading, which, for the sake of convenience, we shall call form 1 and form 2.

Form 1 bill of lading will be that form which is now in general use and which, through a very nominal valuation stipulated therein, is very limited as respects actual loss to the carrier. There will be in this form 1 bill of lading no variation from actual conditions now prevailing.

Form 2 will be a bill of lading under which the carrier will assume the responsibility of providing insurance, covering in a manner coextensive with the voyage from warehouse to warehouse, including land transportation, including theft, pilferage, and all other kinds of loss or damage which by common practice are at present recognized as proper subjects of insurance in connection with a shipment in course of transportation.

This form 2 bill of lading will be based upon and supported by a policy of insurance to be issued by a group of insurance companies, which policy will be more elaborate and extensive but similar in character to forms of policies now issued to cover the business of freight forwarders and commission merchants, and also similar to policies called bill of lading policies, which have for some time past been issued to steamship companies and inland carriers.

These policies cover for the freight forwarder and merchant and steamship company and other parties as interest may appear, and under the operation of these policies risks are reported by the named insured in a manner and at times as provided by the policy.

It will be observed that insurance is coupled with the bill of lading and that the contract of carriage and insurance contract are both completed at one and the same time and without separate negotiation as respects insurance.

Form 2 includes insurance not only for the benefit of the shipper but also insurance for the benefit of the carrier, so that the carrier would be relieved of losses arising out of his own liability, subject, of course, to certain reservations which I will refer to hereafter.

The agreement between the carrier and the shipper, by which the carrier is obligated to obtain insurance, will contain provisions requiring the shipper to observe clearly defined rules and regulations respecting package, both as to quality of the package and manner of packing, and to give guaranties respecting the good character and efficiency of employees engaged to do the packing and employees who transport the merchandise from warehouse to ship's side.

The plan also contemplates an optional code of practice which would provide packages for various forms of merchandise conforming to an agreed standard. All packages so employed by a shipper would bear a label or stamp certifying that the package complies with standard requirements.

Part of the agreement between carrier and shipper governing insurance will include a warranty on the part of the shipper to use only standard packages in connection with shipments made under form 2 bill of lading, and if the shipper does not use that particular form of package for shipments under form 2 bill of lading, such failure would amount to a violation of contract. Should the shipper use an inferior form of package, bearing a label certifying that it is of standard character, such act would amount to fraud, so that the

shipper would be punished in two ways—he would be compelled to bear the burden of the amount of loss and he would be subject to prosecution for conspiracy and fraud.

The release to the carrier by the insurance company is to be accomplished by the terms of an agreement between the insurance company and carrier. No unsatisfactory carrier would be acceptable to insurance company.

In case a shipment made under form 2 suffers loss or damage en route, the examination to determine the character and amount of loss will reveal the cause and also any deficiencies, which, if they are the result of failure on the part of shipper, throws the loss back upon said shipper. If, however, the loss is due to deficiencies on the part of the ocean carrier in not living up to the requirements of their agreement with the insurance company, then the shipper will have a valid claim under the insurance, but the company will be entitled to recovery from the carrier and the carrier will be liable to the company in two ways, according to law and according to contract between the company and the carrier.

Under this system the shipper will not be left in suspense in consequence of deficiencies on the part of others for which he is not responsible and over which he has no control.

Supplementary carriers may be made parties to the arrangement under a system of licensing by a committee or bureau representing underwriters, shippers, and carriers.

The licensing agreement with supplementary carriers will include a reasonable code of practice to be observed by the supplementary carrier in the handling of merchandise, and the agreement will cover not only physical but also moral factors, such as character of crew, general system of management and, if found necessary or proper, may also include guarantees in the form of a bond of an acceptable character.

It will be noted that the provisions of this optional system under form 2 bill of lading may be extended to include railroads as well as all classes of carriers, and that it would have the advantage of relieving rail carriers of a vast amount of loss which they now have to bear under the existing legal requirements.

If by an adequate optional system of contracts we eliminate the hazards of willful carelessness, we need fear no other hazards except the hazards of accident. We should accept the principle that losses resulting from accident should fall not upon the carrier or shipper but instead should fall upon the natural shock absorber, namely, the insurance companies, whose function it is to insure and not act merely as guarantors or sureties back of a bill of lading.

The device of optional contracts between insurance companies, shippers, and carriers of various character is to be employed in a manner that will establish a direct relation between persons having custody of the merchandise and persons upon whom ultimate losses fall, ultimate consumer not included.

By this method it is hoped to accomplish the desired purpose not by the amendment of existing laws or the enactment of new laws with inevitable controversy, under which condition minds do not meet and misunderstandings develop, but instead, by a contract system under which all points of differences are discussed and when

agreements are reached, will provide reasonable assurance that minds have met and that the subject has been disposed of with fairness and equality for all parties. Such a condition can only be brought about by a system of contracts the acceptance of which will be entirely optional.

Present systems will not be disturbed in the least degree, and a shipper or shipowner who is content with existing arrangements will not be disturbed in his privilege to continue such an arrangement.

The new system, however, would provide ways and means by which if the shipper desire, he may secure the benefit of lower costs of packing, insurance, and transportation by the adoption of the optional plan and likewise, carriers can secure for themselves the advantages of the system and increased traffic which the insured bill of lading would bring to them.

Insurance companies would secure a large volume of improved risks upon a basis that would guarantee reasonable freedom from hazards of carelessness and there would be further advantages to the insurance companies in the form of spread of business as to number of risks, geographical spread and small average unit of risk.

Refusal on the part of shippers to adopt form 2 bill of lading system would be a frank advertisement of the fact that they are probably ignoring the reasonable and proper safeguards that should be adopted by them in connection with the packing and transportation of merchandise. Such plain and concise evidence of their attitude respecting responsibilities would naturally result in the refusal of insurance companies to accept insurance upon their shipments made under form 1 bill of lading, except at a rate which would be substantially higher and probably commercially prohibitive.

The operation of the system would greatly simplify the determination of responsibility for loss, including the cause of same and remedies in consequence would be self-suggesting.

At a recent hearing before the committee of the Senate in connection with the District of Columbia insurance bill, one of the gentlemen stated in effect that marine insurance is founded upon shipping and anything that adversely affects shipping will naturally have an adverse effect upon marine insurance.

This very obvious truth is often overlooked by those who seek to improve the situation for the benefit of marine insurance companies.

The present is not an opportune time to endeavor to enact legislation which will penalize or even cause discomfort to shipping interests for the benefit of any other interest.

While existing conditions in some respects are bad, we must not overlook the fact that whatever the present condition is, it is the product of transactions involving literally billions upon billions of traffic values, and that this vast traffic value represents millions of individual transactions.

Any system that successfully bears the strain of this vast volume of business can not be regarded as wholly bad, and it would be surprising indeed if evils in some form or other did not creep in, in connection with such a stupendous volume of business. Their existence, however, does not necessarily prove that the system is radically wrong in all respects.

The system is fundamentally correct, but there are opportunities for evil practices and the evil conditions such as we now encounter,

are not, in fact, the result of the system as a whole, but rather of opportunities that are not at present properly safeguarded. We should, therefore, merely seek to eliminate these opportunities for evil.

The statement that marine insurance is founded upon shipping applies with equal force to shipping; that is, insurance is just as vital to shipping as the water upon which that shipping floats. Without insurance shipping would be tied up. From this we learn the necessity for cooperation on the part of shipping with insurance.

The term "shipping" is a compound term. It includes carriers and shippers. Without shippers neither carriers nor insurers could endure, and it is equally true that shippers could not endure without ships or insurance. Here again we learn a truth, namely, that shippers must cooperate with carriers and insurers.

Cooperation between all elements is beyond any doubt imperatively necessary and I respectfully suggest that cooperation can not be obtained by means of legislation or other methods which are founded upon force, compelling one against his will in favor of another. There must be substituted a wholly optional and inviting system which will be used not by virtue of force, but rather by virtue of self-interest, arising out of the fact that the new system will promote harmony and convenience and reduce costs.

It has been established as a fact that marine insurance is an essential element in the fabric of commerce; that a country which does not possess its own marine insurance facility is inadequately equipped to engage in world trade, and is therefore at a disadvantage with its competitors. It has also been clearly established that this country does not possess an adequate marine insurance facility.

Admiral Benson says:

> Adequate marine insurance is an absolute requirement for the maintenance of a successful merchant marine and the security of America's foreign trade. Marine insurance has been used as an economic weapon against us. We have achieved ship independence. We must now achieve marine insurance independence.

We need not discuss the cause of our marine insurance deficiency, but it is proper to state briefly what would enable this country to acquire an adequate marine insurance facility. This is covered in one word, "demand."

If we are to develop an adequate American marine insurance facility there must first be created a demand for such facility. It is therefore apparent that we must ascertain what will produce a demand. The answer is: Adequate service at no greater cost than the same service may be had for in other countries, and the essence of this thought is service and cost.

Service implies methods by which a desirable thing can be obtained with the least expenditure of effort. Cost is the lowest figure, all other things being equal.

The practice of existing American marine insurance facility is based upon practices identical with those in force in other countries. Service of American marine insurance facility, therefore, is identical. It follows that if we are to give superior service we must devise means for the negotiation of a contract of marine insurance in a manner that will be more uniform, simpler, and more convenient than the means now prevailing.

A system under which the merchant can obtain the broadest possible marine insurance at the same time and in conjunction with the most approved form bill of lading would be a better system than that under which freight and insurance contracts are separately negotiated and which when accomplished are in a measure opposing documents; that is, carriers under present bill of lading conditions seek relief from obligations which they think should be imposed upon insurers, and insurers seek to fix liability upon carriers via clauses in their policies, and the merchant is interposed between the carrier and insurer and is ground between the upper and nether millstones to his great disadvantage, with the resulting annoyance and inconvenience, and frequent delay and complication in the settlement of his claims.

Naturally a shipper would prefer a system that would relieve him of these difficulties or the possibility thereof, and he would regard an insured bill of lading as one which brought to him superior service, so that by this means insurance companies operating as parties to bill of lading form 2 would be offering superior service.

Another advantage of the system would arise from the fact that a large volume of business flowing through one central channel would permit the upbuilding of a statistical system that would give adequate insight into causes of loss, out of which would come self-suggesting remedies and compensating but minimum rates.

A study of these statistics would produce more accurate estimates of loss costs, would provide a more stable practice in the matter of rates, and thus improve upon existing conditions under which the merchant can never be sure that the rate named to him upon a given risk is the same rate as named to his competitor on the same proposed transaction.

A merchant desiring to ship and insure under form 2 bill of lading will have the comfort of knowing that whatever rate is quoted to him for freight and insurance will be the same rate as quoted to his competitor. In this way a standard of costs for insurance will have been established, and there will also have been established a standard of conditions of insurance in which there will be no ambiguity and no deficiencies which do not apply equally to all other shippers engaged in the same trade.

Here again is an advantage which amounts to superior service, which would create a demand for American marine insurance facility as embodied in the arrangement under form 2 bill of lading.

Cost of insurance is the other important consideration in the development of demand for American facility. It does not necessarily stop with the rate of premium. It is also affected by expense, which in turn depends upon difficulties of negotiation.

Under present conditions cost of insurance, as represented by rate of premium, is an arbitrary figure imposed according to individual underwriters' opinions. When these opinions are finally expressed in rates, past experience has taught us that they are neither stable nor accurate. They vary according to individual underwriting results and expediency.

Except in connection with some specific classes of traffic in raw materials, there exists no adequate volume of statistics bearing upon marine insurance and except in connection with such classes of business and hull insurance there is no unity of opinion and no com-

prehensive statistics that enable underwriters to name rates that are consistent or uniform. In consequence there is a wide difference in rates, which, when found to be inadequate, result in a general effort on the part of underwriters to retrieve from one class of business, losses sustained in another, and to make up in a short time through increases in rate, losses sustained as a result of previous deficient charge.

If insurance risks were concentrated and forced to flow through one central channel as, for instance, under form 2 bill of lading, system and division of the risks were made upon a prearranged percentage basis among companies, we immediately would bring into being a system which would provide for adequate statistics covering a volume and diversity of business which would enable underwriters to name rates that would be uniform and consistent, so that there would be no handicap upon any one shipper to his detriment in competition with others.

It is, perhaps, proper to refer briefly to some of the advantages the proposed system would bring to insurance companies, which advantages would reduce expense or cost of handling business, which in turn would be reflected in reduced cost of insurance to shippers, and finally in reduced cost to consumer. Prominent among these benefits are the following:

Prompt payment of premiums, because insurance premiums would be paid at the same time and in conjunction with the payment of freight. This would eliminate to that extent suspense accounts and expensive bookkeeping systems now necessary to keep track of premiums. It would also provide for the companies additional interest earnings in no small amount.

There would be a saving of expense through the handling of reports of risks and settlements of claims through one central bureau in bulk, instead of in detail, as at present.

The system would guarantee uniform practices, uniform settlements, based upon actual liability, to which there would be attached no uncertainty, and this would carry benefits in the matter of reserves for outstanding losses through the removal of uncertainties by the ability of the companies to pay promptly, and also thereby maintain good will toward the system on the part of shippers, with consequent cumulative benefits to the companies.

There would be relief from the expense and burdens of the present cumbersome system of issuing policies and certificates, because insurance being automatically completed with the issuance of the bill of lading, there would be no need for a special certificate, or, as in some cases, a great number of special certificates, to complete documents necessary for banking purposes, and in connection with this feature there would be the added advantage through the elimination of opportunity for error, which might result in complications or substantial loss through such errors or deficiencies, arising in connection with the issuance of certificates.

The possibilities of errors and losses arising therefrom is clearly illustrated by the fact that there has come into existence a form of insurance intended for bankers which provides protection for bankers against omissions or errors or lapse of insurance.

A condition which creates a demand for insurance of this character to bankers is a condition which needs immediate remedy, if a remedy is possible.

If we eliminate the necessity for separate insurance documents and provide a system under which insurance is automatically effected on the basis of standard conditions, the remedy is provided and there could be no possibility of doubt, deficiencies or omissions.

Manifestly, bankers would welcome a system providing perfect security of an undoubted character, and this would tend to aid in financing and in the general conduct of export business, an advantage the importance of which should not be overlooked.

As a practical beginning in the employment of the dual bill of lading system, I suggest that the Shipping Board should enter into an arrangement with insurance companies which will provide for shippers the benefits and advantages that would accrue under the system outlined.

The Shipping Board controls and operates a vast fleet. The traffic by those vessels, if brought under the control of the arrangement suggested, would constitute a nucleus for improvement, and the importance of this nucleus is enormous, because the traffic handled by the Shipping Board is enormous and will be still greater. It would serve as a basis of solid business intelligently controlled along conservative and fruitful lines. The insurance companies participating would immediately acquire a substantial amount of improved business free of the hazards of carelessness, and through that fact there would be established and maintained a facility for marine insurance that would be capable of furnishing insurance to American shippers on a basis of improved service at less cost.

If the arrangement is entered into by the Shipping Board it would serve as a model for all other shipping interests and would probably result in identical arrangements being made to cover traffic by independent shipowners.

The Shipping Board would benefit through the fact that traffic would be attracted to Shipping Board vessels by virtue of the improved service and lowered cost of insurance, in contrast with existing conditions, under which shipments by Shipping Board vessels can only be insured at rates substantially higher than charged for shipments by other first-class vessels engaged in the same trade.

It is clearly evident that if all hazards due to controllable human elements are eliminated and the risk is rendered as perfect as possibe, it should and would take the lowest rate charged for any other risk in the same trade.

Finally, I wish to draw your attention to the fact that this proposed system involves nothing in the form of legal requirement that does not now exist, and, further, that the plan contemplates no reform in methods or practices which would not be absolutely necessary to the success of any other plan; that the adoption or use of the system suggested under form 2 bill of lading is in no sense obligatory, but is wholly optional, and would be used by the shipper only if it presents advantages in convenience and cost over and above existing conditions; that this system can and should be so devised that it will serve the purpose of a model method which, if followed, would produce the ideal condition under which the shipper may have

a domestic marine insurance facility coupled with improved service at less cost.

Mr. LEHLBACH. Mr. Robinson, I think you stated that to bring about a remedy of the present situation no legislation of any sort would be effectual; you could think of or suggest no legislation that would tend to help a reformation of the situation?

Mr. ROBINSON. I could think of no legislation which would cure the situation, which would go through in such form, or, rather, come out in such form finally, and at such time as to be of benefit and be the cure which is immediately needed.

Mr. LEHLBACH. The system which you have designated as form No. 2 bill of lading would imply improved methods in safe guarding cargoes by ship operators, would it not?

Mr. ROBINSON. Absolutely; it implies all the improvements which are sought to be effected by legislation.

Mr. LEHLBACH. And the form 2 bill of lading would naturally cause more care in safeguarding cargoes than form 1, would it not?

Mr. ROBINSON. It would.

Mr. LEHLBACH. But the cargoes all go on the same ships?

Mr. ROBINSON. They do.

Mr. LEHLBACH. Well, why would a merchant benefit by paying No. 2 bill of lading, if he can get the improved service and the increased safeguards under No. 1, at the expense of those who buy a No. 2 bill of lading? This is an optional proposition.

Mr. ROBINSON. Perils of two kinds beset merchandise. We will say that merchandise that goes under Form No. 1 is beset by certain perils. Merchandise that goes under Form No. 2 is beset by the same perils; but the merchandise that goes under Form No. 2 presumably will have better protection and better care by virtue of the fact that it is identified by the markings and labels on it: that merchandise will be stowed in special holds, and will get the attention of persons who will arrange to see that it is cared for.

Mr. LEHLBACH. Then under a Form No. 1 bill of lading a shipowner divests himself of that reasonable degree of care which under the law the shipowner is supposed to exercise?

Mr. ROBINSON. The same law will be in force: the same system will be in force; the same incentive will be in force.

Mr. LEHLBACH. Now, if this system is desirable, and if it can not be expedited by any legislation; if it is purely a voluntary arrangement, why have not any steps been taken in the light of the increasing waste and loss which has been apparent?

Mr. ROBINSON. That I do not understand myself.

Mr. LEHLBACH. If it is purely an optional system, how can it become effective, if no pressure through legislation or otherwise is brought to bear upon the parties who must necessarily enter into it?

Mr. ROBINSON. I take it for granted that the present situation is so bad that shippers can not be sure of two things: They can not be sure that their merchandise will arrive safely and in good shape; and they can not be sure that they will be able to get insurance: in many cases they can not get insurance: the tendency of insurers is to cut out insurance frills. Now, the frills, or special clauses, or, if you please, hazards, that occur before the merchandise is actually loaded on the ship, are what they object to.

Mr. LEHLBACH. Well, is improved packing a safeguard against theft or pilferage?

Mr. ROBINSON. I should say it is, from the attitude of the insurance companies, which require inspection of the packing, and in some cases require a special form of packing.

Mr. LEHLBACH. You have admitted that this element of loss in commerce is serious at the present time—loss due to theft, pilferage, nondelivery, etc.?

Mr. ROBINSON. I do not admit it; I state it.

Mr. LEHLBACH. Pardon me—you state it. Do you think that an appreciable factor in this loss is lack of reasonable safeguarding and care by ship operators against loss by theft and pilferage at the present time?

Mr. ROBINSON. I think there is a lack of safeguarding at the present time.

Mr. LEHLBACH. And do you not think that legislation which would impose the duty of such reasonable safeguards, which at common law were placed upon a common carrier, would tend to cure the situation, even if your plan would very much more materially help it?

Mr. ROBINSON. The point I wish to make there is that the minute you start imposing legal liabilities upon a ship carrier, or any other element in the act of transportation, he gets back of it; he immediately thinks something is being done to him personally; and if the legislation goes through, he thereafter spends all his time and effort in devising ways and means to get away from that. They have been very successful in doing so up to date, and I think they might be successful again.

Mr. LEHLBACH. Well, is not the effect of such legislation, not the placing of unusual liabilities upon the ship operators, but putting back upon them common law liabilities of which they have, through the evasion of the common law and statute, divested themselves?

Mr. ROBINSON. It would be an ideal condition if, when the shipper gets a bill of lading, he could be sure that he would recover the amount of any damage to that shipment, whether it is injured while going over the line of the carrier that has issued the bill of lading or not. That would be an ideal condition, but I do not think that ideal condition can be brought about.

Mr. LEHLBACH. If I own an automobile and it is destroyed or damaged through the negligence or carelessness of another, I recover from my underwriter; but that underwriter steps into my shoes and has a right to recover from him whose negligence occasioned the loss, where, logically, the loss should fall.

Mr. ROBINSON. That is true; but another underwriter pays yours.

Mr. LEHLBACH. Do you believe it a proper practice for ship operators not only to divest themselves of such liability as arises from their negligence but to take advantage of and set off, as against their liability, what an underwriter pays the shipper?

Mr. ROBINSON. No; I do not, unless under a contract to that effect.

Mr. LEHLBACH. Well, is that not the practice to-day?

Mr. ROBINSON. That is the practice to-day.

Mr. LEHLBACH. And would not legislation to prevent that be helpful?

Mr. ROBINSON. If you could get that legislation through; if you could get such legislation through in such form that it could not be evaded.

Mr. EDMONDS. Mr. Robinson, I would like to get the question of the liability under the Harter Act straightened out. Now, the Harter Act applies to a ship. The insurance that you put on pilferage applies from warehouse to warehouse?

Mr. ROBINSON. Yes, sir.

Mr. EDMONDS. Where does the liability of the ship start, and where does the liability of the ship stop?

Mr. ROBINSON. Well, under the suggested amendment of the Harter Act, if the damage occurred before the goods reach the ship, the shipowner would have to stand the loss.

Mr. EDMONDS. In other words, in those cases the shipowner would still be liable?

Mr. ROBINSON. Yes; and it might happen in the warehouse of the shipper.

Mr. EDMONDS. And under the present Harter Act as it stands today, if there were liability in force it would affect goods only while they were aboard ship and while they were under ship's tackle?

Mr. ROBINSON. If the carrier's bill of lading began to attach in the interior point where the shipment originated, then, of course, the carrier is responsible, no matter where the loss occurred, so long as the shipper received the bill of lading and did not receive the goods. But there is the trouble; the carrier will always object to being made liable for any loss that occurred before he got the shipment, even though it occurs in the custody of a supplemental carrier with whom he has a contract.

Mr. EDMONDS. Therefore, he gets relieved from that in his bill of lading and makes his responsibility start from the time the shipment goes on the ship until it leaves ship's tackle?

Mr. ROBINSON. Absolutely.

Mr. EDMONDS. Suppose I was a ship company and I should lease a ship or charter a ship, and it was runing in my line and the ship belonged to you. There is a shipment going on that ship, we will say, to Liverpool, and it goes on your ship. Could that ship be made liable for a loss that might occur on land before it got on the ship?

Mr. ROBINSON. That would depend entirely on the contract of the carrier—the bill of lading.

Mr. EDMONDS. Would the contract of charter that I made as an operator with you leasing your ship bind your ship to pay for a loss?

Mr. ROBINSON. No; you would be the responsible party.

Mr. EDMONDS. I would be personally responsible; and yet the law says the ship is the responsible party?

Mr. ROBINSON. In such cases; yes, sir.

Mr. KIRKPATRICK. I think Mr. Lehlbach's first question has not been answered—at least not exactly to my satisfaction. I do not see why the class 1 bill of lading shippers would not be getting the benefit of precautions taken to protect the class 2 bill of lading shippers.

Mr. ROBINSON. They would.

Mr. KIRKPATRICK. For instance, suppose they went to the point of employing armed guards to take care of class 2 shipments; they certainly would not instruct the guards to allow the class 1 matter to be pilfered or carried away under their eyes?

Mr. ROBINSON. That is true. But would not that be a benefit instead of a detriment?

Mr. KIRKPATRICK. Yes; but the class 2 shippers would be carrying the load for the benefit of the class 1 shippers?

Mr. ROBINSON. But the class 2 people would not be responsible for loss or damage that occurred prior to the shipment being placed aboard ship; in any event the good shippers are carrying the load of bad shippers now and its weight is unbearable. There are evils that would be so substantially less than they are now that there would be a great advantage. Now, if a bank wants to advance money upon a bill of lading, they are not going to advance it upon bill of lading of form No. 1 on the theory that it is going to be protected indirectly in that way.

Mr. KIRKPATRICK. Well, it might go that far. I am not sure that it would not.

Mr. LEHLBACH. You stated that under the legislation suggested with regard to making impossible the evasion of liability for negligence of shipowners, they would be rendered liable for acts or losses in transit before the goods actually came into their possession—losses while in the possession of the land carriers. Now, the only suggestion that has been made with regard to legislation that has come to my notice is to restore liability under section 1 of the Harter Act. Do you consider that that places upon ship operators any liability for loss before the goods actually come into their physical possession?

Mr. ROBINSON. Yes; I think it would. It would operate in this way: Under a through bill of lading the ship is the last party to have the goods; if he does not clear them out in proper shape, it is presumably responsible for them.

Mr. LEHLBACH. Yes; but he looks at them before he puts them in his boat, does he not?

Mr. ROBINSON. He does; but he can not always tell their internal condition.

Mr. LEHLBACH. And they being in his possession and under his control, would it not be easy for him to produce the evidence to show that whatever had been taken from the case, etc., was not taken in the hold of the ship?

Mr. ROBINSON. I do not see how the shipowner can tell what has been taken out of a case, or broken in a case, where it does not show externally that it has been tampered with. A shipment begins, we will say, at Chicago, and is destined for an interior point on the other side. If you get an insured bill of lading you are guaranteed, first, that the package is proper; that the packing is satisfactory, and that it will be handled only by those persons who are approved of by a license system to carry the goods from the warehouse to the railroad; and when it is on the railroad it will receive special care, go forward in special cars along the line until it arrives at the ship's side, and there it will again be checked by persons who will watch over it; and when it goes into the ship's hold you will have reasonable guarantee that it is in good condition. And when it comes out, if there is proper supervision, you will then see what has happened while it is in the ship. If it goes forward in perfect condition, and if it arrives on the other side in an imperfect condition, you will have a reasonable right to assume that whatever

happened to it took place after it arrived on the ship; and then you will know where the accident took place.

Mr. LEHLBACH. Under such a blanket insurance all those engaged in the handling and transportation of such merchandise would bear a proper percentage of the premium cost, would they not—the warehouses, the railroads, the stevedores, the ship operators, the dock operators at the point of destination, and so on? Would that not tend to constant bickering and recrimination among these various interests, some of them claiming that they are paying for insurance against the railroad, or against the warehouseman who is not exercising, in their judgment, a reasonable and fair degree of precaution, but is trying to save the expense such reasonable precaution might entail, thus increasing the expense of these others and increasing their premium rates?

Mr. ROBINSON. The agencies of carriage are the agencies that have control. If the agencies of carriage get to fighting among themselves we will have an ideal condition; all the evils will disappear, because the good agencies will bring pressure to bear upon the bad agencies. And those agencies, being connected with each other, will naturally know how to bring about reforms.

Mr. EDMONDS. Let us take, for example, 10 packages going from Chicago over to some interior point in Europe. Now, those packages leave the factory in Chicago and the railroad receipts for them, even though it is a joint bill of lading with the shipping line the railroad receipts for them?

Mr. ROBINSON. Yes, sir.

Mr. EDMONDS. Then it is delivered at the pier of the steamship company and the steamship company receipts for the shipment in good condition. If they do not they are not doing business properly. I should say that it was a rough way of doing business if they do not.

Mr. ROBINSON. I should say they do.

Mr. EDMONDS. When a man receipts for the shipment on the pier, and it is receipted for in good condition, then it goes on the ship and is carried to the other side, and somebody ought to receipt for it there in good condition. I do not know whether they do it to-day, but it seems to me that with these receipts, given in transit from one carrier to another, it ought to be very easy to place the loss. Of course, I do not know. I am not quite sure whether the Harter Act under a joint bill of lading would cover the shipment from Chicago to New York, we will say; I can not see how it would make the shipowner responsible for the loss. But the minute they receipt for those goods in good condition at the pier I should think they would be responsible for the loss.

Mr. ROBINSON. If they receipt for a package in good condition, it seems to me, they are responsible. I do not know that a carrier attempts to evade his responsibility in such a case, except as stated on his bill of lading, which means that he is liable only for a very nominal value.

Mr. EDMONDS. I see; you have not really had any test of that, because the carrier has always evaded his liability at the start. It is an immaterial matter to him whether they come in in good condition or not under the circumstances.

Mr. ROBINSON. The point I want to make is that the shipment should receive the extreme of care and precaution all the way through from the point where the shipment originates, the packing house or the merchant's shelves, throughout to destination, and that can only be accomplished by care and proper supervision, and that care and proper supervision can only be had if it is under a system by which the various carriers agree to do it, and failing to it then they become responsible.

Mr. EDMONDS. Well, you have given a great deal of thought to this, and of course we have had a good deal of correspondence over it, and I have been much interested in your letters—they are very interesting—and I think it is well worth taking up the time of the committee. The statement or brief which you have read virtually covered the whole subject. Of course, the committee will carefully consider what you have said.

Mr. ROBINSON. Well, it is not very easy to answer some of these questions. They are very broad.

Mr. EDMONDS. Of course they are; but the committee wants to get the general information to enable it to know what the present trade conditions are, what the real way of doing things is—not the theory but the real way.

Mr. ROBINSON. I agree with all that has been said; that there are evil conditions, and that they must be remedied. And I think they should be remedied by a system which operates in a benevolent way, which brings the various parties who are now in a more or less antagonistic position together and enables them to meet around a table and work out a system of contracts, and then work up a bill of lading based on these contracts. And that bill of lading will be as perfect as the shippers and the carriers can make it. Then you do not have a three-cornered opposition, but they will work together and not on a basis where they say that a man has acted illegally and will be punished in such and such a way. Because when that state of affairs had developed you will find that spirit of antagonism which will prevent the completion of the original idea of perfect responsibility of carriers.

Mr. EDMONDS. I am very much under the impression, however, that you would find, in order to get sufficient companies together and to get a definition of liability made between these companies, that it would be necessary to do something with the Harter Act in order to keep it going. In other words, a system like this might be carried out or might not be carried out, without some backbone to it; you would need backbone of some kind.

Mr. ROBINSON. Do you not think that if a merchant had an opportunity to take a perfect bill of lading, such as I think Form No. 2 would be, he would demand that and that the demand would naturally force the carrier to give it to him?

Mr. EDMONDS. Yes; but if the merchant found that the man with a No. 1 bill of lading was getting as good protection as he was with No. 2 he would naturally stop taking out No. 2 bill of lading and take No. 1; and the result would be that the majority of the cargo would be shipped under No. 1 bill of lading, and we would come back to the same evils that we now have.

Mr. ROBINSON. Well, No. 1 bill of lading would not have the checking system back of it, and shortages, pilferages, etc., would take place just the same; and it would not be very easy to make the merchant think it would go through just as safely; and also it would be hard to find a banker or a consignee who would accept a No. 1 bill of lading, because that carries with it a lack of the precautions which would insure safe arrival.

Mr. EDMONDS. That would be true at the start. But gradually it would develop to a point where they would say, "Let it go by No. 1, it does not make any difference."

Mr. ROBINSON. Then I say that if the system was established and if it worked such great benefit that a cargo could go forward on a bill of lading No. 1 as safely as on No. 2, we would have done something very handsome.

Mr. EDMONDS. Except that then we would fall back to this present system, and everything would have to start over again.

Mr. ROBINSON. No; by establishing good practices we would have brought about a change.

Mr. EDMONDS. You think we would get into good habits in that way?

Mr. ROBINSON. We would get into good habits; yes.

Mr. LEHLBACH. Mr. Robinson, it has been suggested here by previous witnesses that there is no inducement, no compelling motive, for ship operators to join with underwriters and shippers and voluntarily increase the liability which they now have. Would it not be necessary, probably, in order to induce ship operators to see the advantages to themselves, as well as to others, of your form No. 2 bill of lading, to replace upon them the liability of which they have divested themselves?

Mr. ROBINSON. That remark implies that the shipowner would not want to abandon his present lax methods in favor of a good system, because he has advantages which accrue to him under the lax methods.

Mr. LEHLBACH. Now, may I ask this question right here—it may be an interruption: But under the present system, have you any personal knowledge as to safeguards and precautions that are now taken by shipowners against that and if so, what precautions do they take?

Mr. ROBINSON. I have no personal knowledge of that; I have only the general knowledge that comes as a result of having heard of losses. It is my belief that if proper safeguards were adopted, the losses would be a minimum. I do not think the losses can all be eliminated.

Mr. LEHLBACH. If it is to the advantage of shipowners to voluntarily take those safeguards, why do they not take them?

Mr. ROBINSON. Because it is not to their advantage to take them: it costs them money to take safeguards. They are just as keen on expense as the carriers are.

Mr. LEHLBACH. Would it not cost them money to go into the Form No. 2 arrangement?

Mr. ROBINSON. If you mean shipowners, yes. But they will not get traffic unless they go into Form No. 2 arrangement, if that system is adopted.

Mr. LEHLBACH. Well, if the shipowners all stayed out of the arrangement, how would you get your goods across the water?

Mr. ROBINSON. I would suggest that the Shipping Board take the matter up and establish a model system.

Mr. LEHLBACH. Is it not the present theory, or the present plan, to have the Shipping Board have as little concern with direct operation of ships as possible, and that there should be independence in method and procedure by the shipowners?

Mr. ROBINSON. If the Shipping Board does not intend to operate and carry cargoes, of course it would not be able to establish a model system.

Mr. EDMONDS. I think that would come under the supervisory powers of the Shipping Board anyhow.

Mr. ROBINSON. Yes; and if the Shipping Board did adopt this system and use it in connection with ships that they operate themselves, they might pass it on when those ships are disposed of.

Mr. EDMONDS. Not only that; but under their supervisory powers a serious question like this would be in their hands to determine.

Mr. ROBINSON. Yes; and I think there may be a difficulty in getting the shipowners to take action to get this thing started; and for that reason I think the Shipping Board has an opportunity to act in a beneficial and moral way to start the system, just to show how easily merchandise can be properly handled, to the end that it will arrive in a safe condition.

Mr. EDMONDS. When you say the Shipping Board, I suppose you mean the new Shipping Board might operate in a moral way? [Laughter.]

Mr. ROBINSON. I mean the Shipping Board as it ought to be. I think the Shipping Board should cooperate with shippers and insurers in an effort to produce a perfect bill of lading and a model code of practice to govern shipping transactions. Such an effort would amount to what may be called practical research work that would develop possibilities and impossibilities. If the Shipping Board does not want to carry or risk the added expense actual and possible through losses, then let insurance companies help the good work along by insuring all or a part of the added liabilities the Shipping Board would incur.

Merchants and insurers are part owners of the Shipping Board vessels. I can think of no greater service the Shipping Board can render to its owners than by helping to develop a cure for a situation that threatens our entire overseas trade and is an equal menace to the Shipping Board itself.

Mr. LEHLBACK. Are there any further questions of Mr. Robinson? If not, the committee thanks you, Mr. Robinson.

(Thereupon the subcommittee took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

The subcommittee reassembled at 2.30 o'clock p. m., pursuant to recess.

Mr. EDMONDS. Mr. Osborn, we will proceed, if you are ready. Please state whom you represent.

STATEMENT OF MR. FRANK H. OSBORN, OF NEW YORK CITY, REPRESENTING CERTAIN MARINE INSURANCE COMPANIES.

Mr. OSBORN. I am one of the managers of the Atlantic Marine Department of the Firemen's Fund Insurance Co., and also of the Home Fire & Marine Insurance Co., of California, and United States manager of the Scandinavian & American Assurance Corporation, of Christiania, Sweden.

I want to say before reading this little memorandum that I have written on the subject of losses by theft, pilferage, and nondelivery, that I indorse everything that Mr. Winter has said on the other subjects of breakage, leakage, bad stowage, and so forth. I have not covered any of those points.

I also want to indorse completely Mr. Rush's suggestions for corrective measures.

With your permission I will read the following memorandum which I have prepared. [Reading:]

Extent of losses by theft, pilferage, and nondelivery: Prior to the war, claims due to these causes were quite rare. No charge was made on shipments of merchandise to and from Europe with possibly the exception of Russia, Turkey, and Greece; whereas, at the present time underwriters are losing money with charges of from ⅜ per cent to and from United Kingdom to 3 per cent to and from Italy and 5 per cent to and from Portugal. Coverage of this character on merchandise to Russia, Turkey, and Greece is virtually unobtainable at any rate now and the same is practically true of Germany, Austria, Poland, Czechoslavakia, Rumania and Jugoslavia.

Prior to the war, only nominal charges were made in connection with shipments of merchandise to Mexico, Central America, West Indies, north and east coasts of South America, China, Japan, and the Philippines, with no charge to Australia and New Zealand. Rates of ¼ per cent to 1 per cent were charged to the west coast of South America. At the present time, the rates to these various destinations range from 1 per cent as a minimum to 10 per cent and even 15 per cent.

All of the above refers to merchandise only moderately susceptible to theft and pilferage; such merchandise as wearing apparel of every description, cutlery, leather goods, silks, laces, and cotton and woolen piece goods in cases are virtually uninsurable.

As an example of that I will state, outside of my memorandum, that I looked up this matter of theft and pilferage and I found that early in 1919 they were obliged to increase the rates on ordinary merchandise from Cuba from one-eighth of 1 per cent to one-fourth of 1 per cent. At that time we thought we had possibly corrected the whole situation, and possibly might make a profit. At present we are charging 2½ per cent by approved liners, and 5 per cent by other vessels, and losing money. [Reading:]

Early in last March, eight New York offices combined their figures of theft, pilferage, and nondelivery, losses paid for the preceding months, viz.: November and December, 1920, and January, 1921. The aggregate figure was $1,204,073.21, being at the rate of over $4,800,000 a year for the eight offices only. Until quite recently, much lower rates for this cover were obtainable in London than here and a very great deal of business was sent to London. I think it is safe to assume that the other offices in this country and the London underwriters, during the same three months, paid at least half as much as the eight offices above referred to, which would indicate an annual loss of nearly $7,500,000 on shipments of merchandise to and from the United States.

I want to elaborate again on that by saying that the figure is undoubtedly too low. It is hardly conceivable that all the rest of the markets paid only half as much as the eight offices to which I have re-

ferred. Further, I overlooked entirely the losses sustained by shippers who carried no theft and pilferage insurance; also on the shipments which are insured in the country of origin coming to this country; and also shipments from this country which are insured in the countries of destination. There is a very considerable amount of such insurance. [Reading:]

I am told that the trade competitors of this country, the leaders of which are England, France, and Germany, are also suffering to a considerable extent with this country, but I do not believe to anything like the same extent; at least the insurance rates charged in those countries do not indicate it. However, it must be said that the underwriters of those countries, at least of England and France, do not grant the liberal coverage which is given by underwriters here, and the shipper having a financial interest in the safe delivery of the goods takes greater pains in packing and in claiming losses from carriers.

The situation is therefore serious from the standpoint of the foreign business of the United States, and, consequently, of the future of the American merchant marine, not to mention the marine-insurance business of this country, the volume of which naturally depends on the success of the first two factors mentioned.

Suggested remedies and constructive measures: First and foremost. It is, in my opinion, the prevention of issuance of bills of lading by carriers exempting them from responsibility for their own misdoing and neglect or that of their employees, or limiting their liability. It is quite true that the present situation is due in part to a general breakdown of the morale of the world due to the war, but it is equally certain that it is due in part to the indifference of the carriers who have recently found means to evade their responsibilities or limit them to absurdly low figures. It must be remembered that prior to the war when theft and pilferage was hardly considered a factor in the insurance of the imports and exports, that the present limitations in bills of lading did not exist and the carriers maintained proper watch service and otherwise looked after the goods entrusted to their care, for their own protection. Were this situation restored, I feel safe in saying that the waste from this cause would be reduced at least 50 per cent, probably more, and this at a cost to the carriers of a fraction of the amount saved. I am certain that it was never the intent of the Harter Act (the true intent of which I believe to be for the benefit of the country) to in any way exempt the carrier from a proper measure of responsibility.

The enactment of legislation amending the Harter Act as suggested, will not, I believe, act as a handicap to the American Merchant Marine as it will apply equally to foreign flagships.

Second. Adequate packing by exporters of merchandise and insistance on the same by importers is of very great importance. I believe nearly all of the marine insurance companies have been doing constructive work along this line. We, for instance, have an expert merchandise packer in our employ who spends his entire time visiting factories and warehouses from which goods which we insure are shipped, instructing the manufacturers and shippers in the proper method of packing for export and calling to their attention the latest improved devices in securing cases and packages of goods so that pilferage is difficult if not impossible. Of course, the theft of entire packages does not depend upon packing method and can only be prevented by watchfulness on the part of the carriers. I am told that American exporters have always been at a disadvantage in competition with their European rivals in the markets of the world due to inadequate packing and protection of the goods shipped, not only from theft and pilferage but also from seawater and exposure. Naturally, the foreign buyer wants his goods delivered to him when he requires them for his trade and also wants them in good condition. I think this is a matter which should receive more attention from the various trade associations than it has in the past.

Third. A corporation known as the "Trade Protective Association" has been formed by leading marine insurance offices in this country with a paid-in capital of $50,000 to prevent theft and pilferage, to secure and distribute among the stockholders information, and to perform services in the way of detective work in following up cases of importance. This association, however, in my opinion, can accomplish little without the hearty cooperation of all importers and exporters, their trade associations and the carriers. The best way to secure the cooperation of the carriers is to force them (quite properly) to have a financial interest in the safe custody and delivery of the goods entrusted to their care.

Insured bills of lading: I have been told that two legal forms of bills of lading have been suggested—one under which the carriers will assume all the risks of transportation and navigation and the other under which it will assume none. Differential rates will be charged and presumably the carriers would secure full insurance from the underwriters when the "full value" bill of lading was issued. This may at first sight appear to be desirable, but I can not see where it would change the present situation in the least unless to make it worse. The carriers would in this way be relieved of even the small responsibility they now assume and would therefore have less incentive than ever to properly protect the goods. As a result, marine insurance rates would have to be increased still further, thereby placing a further handicap on American foreign trade.

Each carrier would naturally assume responsibility for safe delivery only for the time the goods were in its custody, and the insured bill of lading feature would therefore not fully protect the shipper as marine insurance does at present. There are frequently several carriers involved in the course of a shipment—

The truckman at some interior point to or from the railroad.
The railroad to or from the seaport.
The truckman between the railroad warehouse and steamship dock.
The steamship.
The lighter.
The customhouse.
The rail or water carrier (river or canal).
The truckman again.

I fail to see how it would be feasible for any carrier to issue an insured bill of lading which would cover all of these factors.

If I am correct in this, the assured would be forced to place insurance as usual with the companies, subject to the "full valued" bill of lading, at an additional cost. Of course, the additional cost would be less than the rates of premium charged by underwriters with the present form of bill of lading.

Mr. EDMONDS. I would like to ask a question from your practical experience. Take the case of English ships and American ships sailing from New York Harbor to the west coast of South America, for example; both of them want insurance against theft and pilfering, disturbance of cargo, and so on; would they be charged an equal rate?

Mr. OSBORN. They would at the present time.

Mr. EDMONDS. By the New York companies?

Mr. OSBORN. Yes.

Mr. EDMONDS. But would the English company give the English ship a better rate across the ocean, or are your rates equal?

Mr. OSBORN. I could not answer that. I do not know.

Mr. EDMONDS. From your statement it would seem that the English have been able to curb the trouble much more than the Americans.

Mr. OSBORN. Well, I was speaking of shipments from England to the west coast of South America, say.

Mr. EDMONDS. Well, would a shipment from England to the west coast of South America get a better rate than a shipment from New York to the west coast of South America?

Mr. OSBORN. I believe it would, in England.

Mr. EDMONDS. It would get a better rate?

Mr. OSBORN. I think it would.

Mr. EDMONDS. Then of course that is an advantage to English shippers.

Mr. OSBORN. Exactly.

Mr. EDMONDS. That would indicate that there was less pilferage on English ships than on American ships.

Mr. OSBORN. I believe there is less pilfering on English ships from English ports than on any ships from the United States.

Mr. EDMONDS. You would think, then, that an English ship sailing from New York to the west coast of South America would probably have an amount of pilfering equal to that on an American ship?

Mr. OSBORN. I can not say that I have ever noticed any difference. We have both; and we make the same rates.

Mr. LEHLBACH. Thank you very much, Mr. Osborn. We will now call Mr. McComb.

STATEMENT OF MR. S. D. McCOMB, MANAGER OF THE MARINE OFFICE OF AMERICA.

Mr. MCCOMB. I am manager of the Marine Office of America; that is, the marine department of the American Insurance Co. of Newark, comprising the following companies: American, Eagle, Continental, Fidelity, Phoenix, the Firemen's Insurance Co. of Newark, and the Glens Falls Co. of Glens Falls.

I would like briefly to outline what we think is the cause of this large increase in theft, pilfering, and short delivery, and also the breakage and leakage, and the effect it has had on commerce, and then what we would suggest as a remedy.

I can say in starting that I agree with Mr. Rush and Mr. Winter and Mr. Osborn.

The war, in a large way, we think, is responsible for present conditions. During 1915 and 1916 there was considerable confusion in shipping, and with the large increase in the number of vessels there was an increase in inexperienced masters and crews, and also inexperienced stevedores in loading and unloading vessels. There was a great congestion in all the railroad yards and on the docks, and in many cases goods had to be stored out in the open streets, and the regular customary methods of transportation were entirely thrown out of kilter. This naturally resulted in an increase in the percentage of goods in foreign trade that did not reach their ultimate destination in good, sound, condition; but the increase in this loss was not occasioned by strictly marine perils. The largest losses, of course, were actual war losses—sinking by submarines—but there were also losses from exposure, due to goods on the street being rained and snowed on, and losses caused by damage from other cargoes, as in the case of soda being stowed next to some barrels of oil which leaked.

There was also a great deal of breakage, which undoubtedly was occasioned by improper stowage. Then in addition there were the delays in arrivals.

A strictly marine insurance policy does not cover losses of this kind, as they are not perils of the sea. They can be more properly classed as perils of transportation, and formerly, before the war, carriers to a greater or lesser extent settled those claims, and the marine insurance companies paid the strictly marine losses caused by fire, sinking, stranding, collision, and heavy weather. But during the war the shipowners began to evade their liability. There were a great many ship operators that had no particular financial strength, and they were inclined to evade losses, and there were new bills of lading adopted rather designed to let the carrier out of his liability.

Then also cables were not working readily and means of communication were broken down. It was difficult at that time to get proper

reports back and forth, and it became difficult to pin the liability on to the carrier. So that the owners of goods sought relief, and that resulted in pressure being brought on the insurance companies to assume these additional hazards, and to-day in the warehouse-to-warehouse policy it is really a transportation policy more than it is a policy of marine insurance. So on this so-called war-risk policy from warehouse to warehouse, no matter what happens to the goods or in what condition they arrive, or if they do not arrive at all, the insurance company makes good the loss.

The yielding of the insurance companies to this pressure, as Mr. Winter said this morning, has resulted in making matters worse, because the shipowners are aware that this cover is being granted now, and they are resisting more strongly than ever any attempts to place the liability on them, and they are now putting in their bills of lading that insurance claims paid to a shipper releases them. The result of this is that shipowners are not exercising the care of the property in their custody that they formerly did, and we think that it should be the first principle in transportation laws, whether by land or sea, that the persons having goods in their custody should be held financially responsible for them.

In justice to the ship operators I would say that they are not solely responsible for this condition; that shippers and consignees have both contributed to some extent. The more experienced exporters, those who were in business before the war, that had a trained staff and realized the hazards to which their goods would be subjected—those men have to a great extent kept up the same kind of exactions, but during the war a great many new importers got in and they did not realize how severely a case of goods is handled sometimes, and their cases were not constructed as they should have been, and these cases, sometimes before they arrive at the steamer at all, are broken. You can go down along the dock and see cases with the whole ends knocked off, and that is simply an invitation to pilfer, because the goods are right there, open, and anybody going by can help himself. That undoubtedly has added to the pilfering.

In addition, I think investigation has shown that there are some shippers who are absolutely dishonest. They have secured a policy covering theft and pilfering and short delivery, and pack in cases which are supposed to contain a dozen articles only 9 or 10 articles, and some of the investigations point to a certainty that that is the condition in which they left the original packer. Of course, that class of people have to be dealt with differently. The faults of the honest shipper can be corrected by a campaign of education, I think, through the export associations and chambers of commerce showing the men how they ought to send their goods and how they ought to pack them.

The same thing applies to consignees. While some consignees undoubtedly get packages that do not contain all they are supposed to, and there have been cases of pilfering, some cases certainly indicate that the buyers state that they receive less than they actually do. I think that is especially true down in South America. There is one contributing cause that has added a good deal to that, I think, and that has been the great shrinkage in prices. People in South America, say, bought goods a year ago at twice what they are worth to-day;

when they get the goods down there they do everything they possibly can to evade taking them. They know that if they take them they will have to pay twice what they can go out and buy them for now. There have been meetings of chambers of commerce and export associations to handle that South American situation. I think there is something like $50,000,000 worth of American goods on the piers and docks and warehouses down there which the South American consignees are trying not to take. But in the total of these theft and pilferage losses—and some of them can be put right on the shippers themselves who do not put them in the boxes, then on the trucks who take them from the warehouse to the railroad or the pier—the trucking thefts have been very heavy. Then there have been thefts on the railroads, thefts on the piers by the stevedores; thefts on board the steamer, and from the steamer to the consignee, and finally thefts right in the consignee's own plant.

The total result of all these thefts combined has resulted in a tremendous economic loss. It is practically impossible to tell in dollars how much they amount to, but from confidential figures collected from a number of American companies the loss from theft, pilferage, and short delivery to-day is running at half a million dollars a month.

In addition to this there is the American business that is placed abroad and then the thefts that the other countries are experiencing, which are about the same as in this country. So there is not any doubt that the ultimate wastage to-day is running into the millions every month.

To give you an idea of this, which will be probably more accurate than you can get it from general statements, I have here a list of approximate rates for theft and pilferage on the best class of commodities from the United States to foreign countries, and what it was in 1914 and in 1919 and 1921—the present rates. I will leave this with the committee. It shows in 1914 that the rates were nominal to all European points; probably one-fourth of 1 per cent to Mexico and South America, and nominal in the Far East.

In 1918 and 1919 they ran from one-eighth to the United Kingdom to a quarter and three-eighths to the rest of Europe, and a quarter for the Far East.

Then the rates to Mexico and South America were jumped up from 1 to 2 or 3 per cent.

To-day the rates are three-eighths of 1 per cent to the United Kingdom; 1 to 1½ per cent to France and Spain; 4 and 5 per cent to Portugal; 3 to 5 per cent to Italy; 5 and 10 per cent to Mexico, and as high as 10 per cent to South America, where it is obtainable at all.

So that the rates have jumped up 300 or 400 or 500 per cent; and before, at the low rates, it was taken willingly, and now it is only taken more or less under pressure and under exceptional circumstances and only, on high-class commodities, on those not susceptible to theft and pilferage.

As has been already stated, the articles most susceptible to theft and pilferage seem to be clothing and wearing apparel of all kinds, and material for making wearing apparel, firearms, cutlery, and hardware.

I will submit this statement of rates, with your approval.

Mr. EDMONDS. It may be inserted at this point.

(The paper referred to follows:)

Approximate average rates on best class commodities for theft and pilferage.

From the United States to—	1914	1918–19	1921
United Kingdom	Nominal	⅛ per cent	⅜ per cent.
France	do	¼ per cent	1–1½ per cent.
Belgium and Holland	do	do	¾ per cent.
Spain	do	⅜ per cent	1½ per cent.
Portugal	do	do	4–5 per cent.
Italy	do	¼ per cent	3–5 per cent.
Scandinavia	do	do	1 per cent.
Mexico	¼ per cent	1–2 per cent	5–10 per cent.
Cuba	5 cents	¼ per cent	2½–5 per cent.
Haiti and San Domingo	do	½ per cent	2 per cent.
Central America	do	do	Do.
West Indies	do	¼ per cent	¾ per cent.
Brazil	do	⅛ per cent	3–5 per cent to ports, 4–7 per cent to interior.
River Platte	do	do	2–3½ per cent.
West Coast of South America	½–½	1–3 per cent	2–5 per cent to ports, 8–10 per cent to interior.
China	Nominal	¼ per cent	1 per cent.
Japan	do	do	Do.
India and Straits Settlements	do	do	Do.
Philippines	do	do	1½ per cent.

These rates apply to commodities most susceptible to pilferage—clothing, wearing apparel, and material for making same.

The same thing applies to leakage rates. Before the war they were not very high—one-half of 1 per cent, say—and now rates run from 2 to 4 per cent to European ports, if it is obtainable at all. But even with the increase of rates the tendency is to cut out the business. The result is a burden imposed on our commerce. In some cases it has gotten to be more than the traffic will bear. And conditions are not improving, because the most available figures indicate that they are getting worse, and if foreign trade in this country is to increase, this situation has got to be corrected.

I would like at this point to explain the position of our companies toward this whole matter, and I think it is the position which most of the insurance companies take. We are not making these suggestions from any selfish motive, but for the good of the whole country and the people. We desire to see American foreign trade prosper and the American merchant marine become firmly established and expand. From this prosperity we expect to benefit, and properly so. The problem, however, we consider a national one, affecting the prosperity of all of us, and we think it should be only considered from that standpoint. We believe that insurance should not be considered at all in trying to solve this problem; that it should be considered entirely from the economic standpoint.

We feel that we should try to determine the soundest way to develop our foreign trade, and the way which is considered will result in the largest proportion of our goods arriving at ultimate destination in sound condition; and then how this can be accomplished at the least expense and have goods delivered in the shortest time.

I say that the insurance companies should not be considered in determining this plan, because insurance can be arranged after all

this is settled. Insurance can be fixed to cover any particular selling conditions. The shipper, the carrier, and the consignee can all cover their respective liabilities. The insurance premiums in the long run will have to be sufficient to cover the losses, and regardless of who actually pays these premiums they must be borne in full, in the long run, by the consignee. So that the plan which involves the least loss, regardless of who may be held liable for it, is the plan which will be the cheapest for the ultimate consumer. Insurance simply distributes the loss. By means of it the total loss or the value of the amount lost of the given commodity is spread somewhat evenly over the consumers; so that, instead of falling entirely on the owners of the particular part that is lost, it is a very light burden on all of them, instead of a heavy burden on a few of them.

As an example, say that statistics showed that one-third of 1 per cent of all of a given commodity exported from this country was totally lost—this is an imaginary case, but say that statistics showed that one-third of 1 per cent of any commodity was lost, and the insurance companies charge one-half of 1 per cent premium. That one-half of 1 per cent would be distributed on the cost to all the consumers of it, which would be a very small increase in the cost, and yet by having the insurance it would be a life-saver for the few people who owned the particular cargo of goods that was lost.

We would recommend closer cooperation between all interests involved—that is, the shipper, the carrier, the consignee, and the underwriter—with their respective relations maintained by better forms of contract than at present, accompanied by such legislation as was necessary to preserve the status that was decided to be best.

Shippers can cooperate by having their goods packed better, considering the particular trip that each case must take, and having it so packed that it can be handled in due course throughout the entire trip, standing the wear and tear to be encountered; by having it properly marked and labeled with marks and labels that will be there when the trip is over, and also by having the cases so secured that they can not be opened or tampered with en route without showing signs of the tampering.

We are not discussing the dishonest people; we are assuming that these recommendations are for the honest shippers and carriers.

The carriers, we feel, can cooperate by issuing a better form of bill of lading, which I will take up later in detail, and by taking better care of the property intrusted to their care. At present some carriers do not seem to take care of the goods in their custody. We have been advised that some companies are reducing expenses by discharging watchmen and other employees incidental to taking care of the goods in their charge. If there is no responsibility on their part, why spend money looking after the goods?

Many watchmen employed now are largely old men, and some of them cripples, and you can not expect an old man, 70 years old, possibly with a wooden leg, to stand on a pier and try to stop two or three husky longshoremen from walking away with goods. There was one of them that tried it and he was taken to the hospital and stayed there for two or three weeks and said he would never try it again. The steamship companies have got to employ men on their docks with nightsticks, or whatever is necessary to handle these roughnecks.

There is no doubt that the carriers can stop the losses if they want to, and are willing to spend the money. I think that the Bull Steamship Co. is a case in point. On a certain form of bill of lading the Bull Steamship Co. has been carrying goods very successfully down to Porto Rico with, I believe, almost minimum loss.

The consignees also can cooperate in this thing by taking their deliveries promptly and by making an immediate examination of their goods and reporting on the condition in which they find them on arrival. Some of the worst abuses are the delay on the part of the consignees after they receive their goods, and I do not think it is considered unusual for some claims not to be reported for a year.

The underwriters can cooperate in this by providing a policy to suit the conditions that are agreed on, and arranging to have competent representatives abroad acting with the consignees.

The underwriters recently amalgamated the New York Board and the National Board of Marine Underwriters, and this undoubtedly will have a beneficial result and will result in American companies giving better service to consignees abroad.

It has been argued that putting responsibility on the shipowner will handicap the ship operator; that it will be another burden on their backs when they are scarcely able to get along with the burdens on them now. I do not think that this is true at all, and I think it can be demonstrated not to be true. Most of our exports now are sold on c. i. f. terms—which means cost, insurance, and freight. The exporter knows what his goods cost him and what he sells them for at his factory. That is the cost, and he finds out what the insurance will cost and what the freight will cost, and those are added together, and that is what the consignee pays. The exporter is only interested in the total of this sum, and if you can reduce c. i. f., he does not care how much is "i." and how much is "f." if the total is reduced.

As an example, say a merchant is sending $10,000 worth of piece goods to Valparaiso. The insurance to-day, theft, pilferage, and marine, would cost him at least $600; freight, say, $200, making a total of $800 to add to his $10,000. Now, if full carrier's liability were imposed on the shipowner he would have to charge more, first, for additional people to care for the goods, and, second, for insurance. The better care he took the less his insurance would be, as he would be charged according to his results. But say the shipowner would have to double his freight charges. If that were true, that would make $400, or, say, $500 even, and the exporter's insurance under conditions of that kind would be reduced to $150 or $200. So that the "i. f." part of the c. i. f. would be reduced to $600 or $700 from the present $800.

The American exporter would be able to get his goods to a foreign market cheaper, because a smaller portion of them would be lost on the way. This would lower the price, because the cost of all the goods shipped has to be charged against the percentage that arrive there sound.

The ultimate consignee pays the c. i. f. and is interested in getting the lowest total of these three factors, and anything that can be taken off the insurance can be added to the freight, and an example of the great increase in insurance companies, and the cost, in the last few years, shows that there is plenty of margin for a shipowner to in-

crease his charges and still have the total expense of getting goods there less.

Now, I might refer here to the insured bills of lading. Some steamship companies to-day issue bills of lading that are insured, but it is not practical in the general run of business, because it only covers goods on a portion of their journey instead of the entire journey. I think possibly a similar case would be a man in Chicago who wanted to send a registered letter to a man in Paris, and the post-office authorities would say to him, after this letter is put on the steamer at New York, "We will register this letter until it is taken off the steamer at Havre. Between Chicago and New York, and between Havre and Paris, you have got to make other arrangements." The bills of lading at the present time, insured bills of lading, only cover while the bill of lading is in force, and practically while the goods are in the hands of the ocean carrier.

This problem of shortages and breakages is not only being considered here in the United States to-day but it is being considered by the British Empire. The report was handed in, was it not, the report of the British Shipping Commission?

Mr. EDMONDS. Yes.

Mr. MCCOMB. It provides for uniform legislation throughout the whole British Empire. Australia and Canada now have acts similar to our Harter Act, and that commission's report recommends similar legislation for the whole British Empire.

Japan now has a law imposing liabilities on the carriers, and I believe one has been introduced in France, and one is being agitated now in Scandinavia. So it looks as if the whole world is interested in this problem. They all seem to feel that the country which satisfactorily solves this problem first will get a lead over its competitors in world trade. And this thing is solely a foreign-trade matter, an international matter, and I believe ultimately it will have to be settled in some form of international bill of lading agreed on, somewhat along the lines of the load line we were talking about last week.

Each country seems to be afraid that one of its competitors will get some advantage over it, or that it will be placed at a disadvantage to one of the other competing nations. I think this idea was brought out by the Shipping Board at those load-line meetings. No country wants any other country to get an edge on them, and the only way that any country will feel that they are each on an equitable and fair plane will be through an international agreement, and I do not think we will have international harmony until there is some kind of reciprocal arrangement.

Mr. FREE. May I ask you a question right there? If this should be adopted in this country now, would it put our shippers at a disadvantage as compared with foreign shippers?

Mr. MCCOMB. No, sir.

Mr. FREE. It would if it were only made effective here, would it not?

Mr. MCCOMB. No; because if it were put in force here, it applies to all foreign ships coming to our ports, as well as American ships.

It might be advisable to try to perfect an arrangement along the lines of, say, an international Carmack amendment, under which a common carrier could give what would be really a transportation

receipt for goods from their points of origin to the points of ultimate destination, and under an agreement made at the same time or subsequent to it which would carry the goods under the terms of the original transportation receipt.

There is an international postal agreement in force now for the transportation of mail, and we have the Interstate Commerce Commission, and under the Carmack amendment here the initial carrier completes all the arrangements with the shipper for transportation, even when the goods have to go over seven or eight different railways. Possibly something of that kind could be worked up in an international agreement.

I mentioned before, the marine insurance companies to-day are not issuing really a marine insurance policy; they are issuing a transportation policy that covers goods on shore in the hands of truckmen, railroads, river steamers, ocean steamers—through policies; and I think that the common carriers could get together to issue a transportation receipt to cover the entire journey from warehouse to warehouse. This is in the future. It will have to be worked up to that, but I think it is good to consider what we might ultimately work up to.

Now, along the lines already spoken of by Mr. Rush we have suggested an amendment to the Harter Act which I would like to place on file.

Mr. EDMONDS. That may be included in the hearing.

(The paper referred to follows:)

AN ACT Relating to bills of lading and certain obligations, duties, and rights in connection with transportation of goods by water.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any carrier accepting any goods for transportation to, from, or between ports of the United States and foreign ports shall be liable for the full actual value thereof to the lawful holder of any bill of lading issued therefor, or to any party entitled to recover thereon, for loss, damage, or injury to said goods while in the custody of said carrier or any other carrier to which said goods shall have been delivered in the course of said shipment, arising from robbery, theft, or pilferage, by whomsoever committed; negligence; fault or failure in proper loading, stowage, custody, care, or improper delivery to the consignee named in said bill of lading of any and all lawful goods so accepted for transportation as aforesaid: *Provided, however*, if the vessel transporting said goods shall be in all respects seaworthy and properly manned, equipped, and supplied for the intended voyage, the carrier shall not be held responsible for damage or loss resulting from faults or errors in navigation nor liable for losses arising from perils of the sea or other navigable waters, acts of God or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

SEC. 2. That in any action against the carrier to recover the value of said goods due to loss, damage, or injury thereto, the burden of establishing that the loss, damage, or injury to said goods was occasioned by a cause for which under the provisions of this act the carrier is not liable shall be upon the carrier.

SEC. 3. That it shall be the duty of any shipper delivering any goods to any carrier to properly pack the same for shipment and to truthfully describe or make known to said carrier the true nature and character of the goods included in said shipment and the full actual value thereof as disclosed in the customs or consular invoices accompanying the same.

SEC. 4. The acceptance by any carrier of goods for shipment and the delivery of a bill of lading therefor shall be prima facie evidence that the goods included in said shipment were properly packed for shipment, and in any action against

the carrier to recover the value thereof due to loss, damage, or injury thereto the burden of showing that such loss, damage, or injury was due to insufficiency of package or improper packing shall be upon the carrier.

SEC. 5. That is shall not be lawful for any carrier to insert in any bill of lading any clause, convenant, or agreement whereby the carrier shall be relieved or exempted from any liability imposed upon it by any of the provisions of this act, or whereby the liability of the carrier for any loss, damage, or injury to such goods, or any specific portion thereof, shall be limited to less than the full actual value thereof as disclosed in customs or consular invoices accompanying the same, or any clause, covenant, or agreement providing that the carrier shall have the benefit of any insurance effected by the shipper upon the goods, or that the carrier shall not be liable for any damages capable of being covered by insurance, or any clause, covenant, or agreement providing a shorter period for giving notice of claims for loss, damage, or injury to said goods than 90 days, and for the filing of claims for a shorter period than four months, and for the institution of suits than two years; or any clause, covenant, or agreement whereby the obligation of the carrier to properly equip, man, provision, and outfit any vessel transporting said goods, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the carrier to carefully handle and stow said goods and to care for and properly deliver the same, shall in any wise be lessened, weakened, or avoided. Any and all words or clauses of such import inserted in bills of lading shall be null, void, and of no effect.

SEC. 6. That it shall be the duty of every carrier to issue to the shipper of any lawful goods a bill of lading stating among other things the marks necessary for identification, number of packages, or quantity, stating whether it be carriers' or shippers' weight, and the true actual value of said goods as disclosed in the custom or consular invoices relating thereto, the apparent order or condition of such goods, and that said bill of lading is issued pursuant to the provisions of this act. Such bill of lading shall be prima facie evidence of the receipt of the goods therein described.

SEC. 7. That any person or persons who shall willfully violate any of the provisions of this act, or the carrier guilty of such violation and who refuses on demand the bill of lading provided for herein, or issues any bill of lading containing any clause, covenant, or agreement declared by this act to be unlawful, shall be guilty of a misdemeanor, and shall pay a fine of not less than $1,000 and not exceeding $2,000. The amount of the fine and costs for such violation shall be a lien upon the vessel of any carrier guilty of such violation and such vessel may be libeled therefor in any district court of the United States within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation, and the remainder to the Government of the United States.

SEC. 8. That in this act, unless the context of subject matter otherwise requires, carrier means any ship or vessel, owner, charterer, agent, manager, master thereof, accepting any goods for transportation by water.

Shipper means any person, partnership, association, or corporation, entering into any agreement with any carrier covering the transportation of goods by water.

Goods means merchandise, chattels, or property of any description in the course of transportation by water or which have been or are about to be transported by water.

Bill of lading means any shipping receipt or document issued covering the transportation of goods by water.

SEC. 9. Sections 8029 to 8035, inclusive, of the Revised Statutes of the United States and any or all other provisions of the statutes of the United States inconsistent with the provisions of this act are hereby repealed.

Mr. MCCOMB. I would like to mention, just by way of suggestion, that it might be advisable to grant authority to the Secretary of Commerce to remit some of the requirements in that law in the case of experimental cases; that is, new types of boats, or a new type of goods, or a new trade route, or something where the thing was an experiment and the Secretary of Commerce thought that with the full rigors of the law, possibly they could not be developed, but now it might be advisable to consider such a plan.

We would also like to suggest that, so far, the Harter Act applies only to shipowners' liability, and we would like to suggest that consideration be given to fixing the liability of everyone handling goods in connection with import and export shipments, so that what I have referred to as a transportation receipt could be given and could cover from the time the goods left the warehouse until they arrived at the warehouse; to include not only shipowners but truckmen, lightermen, warehousemen, railroads, and any person having any custody of the goods during the trip. It might be possible to license such persons, to grant permits, to handle goods in import and export trade, and possibly bond them. Too many people with no financial responsibility are handling very valuable goods to-day. Truckmen with a net worth of less than $5,000 are allowed to go off with a load of goods worth $100,000.

More than one truck a week is reported absolutely missing in New York. That is in addition to all the petty thefts and pilferings that are going on. They steal a whole truck, and in Congressman Lehlbach's State these trucks between Philadelphia and New York are missing all the time, and similar trucks, full of silk, run up to $100,000 in value.

The liability of every person in connection with a shipment all the way through, I think, should be fixed, and only persons with financial responsibility should be permitted to participate in the whole movement. Of course, ultimately it will not be necessary to have such an arrangement in this country, but it would have to be world wide in order to be entirely successful, and that, of course, would necessitate an international agreement. But I think this could ultimately be done.

When you follow a shipment through from warehouse to warehouse, it is trucked from the factory to the railroad, from the railroad to the seaboard; it is trucked into a warehouse there, trucked out again, lightered, put on a steamer, goes across, and may be landed on a dock or lightered over there; then it is trucked to a warehouse, frequently put on a river steamer and trucked to the warehouse again. In its whole trip it is handled by a great many persons.

Another suggestion that might be possible for the congressional committee to consider is an advisory committee, consisting of men expert in importing and exporting, and ship operators, and all the interests involved, to make an investigation and report to the congressional committee here on the feasibility of putting such a plan in operation and the possibility of reciprocal arrangements with the leading foreign countries.

Now, I would just like to say something on bills of lading and then I will be through. To conform to the suggestions for shipowners' liability we have recommended—we would recommend—that bills of lading provide for the following:

1. That carriers be held fully liable for all losses to goods while in their charge, except losses caused by perils of the sea or other navigable waters, acts of God, or public enemies, or from inherent defects of quality or vice of the goods carried, or from insufficiency of package, or seizure under legal process.

That is the same as the Harter Act.

2. That the carriers be prevented from limiting their financial responsibility, because of such liability, to less than the invoice value of the goods.

3. That the carriers be compelled to make proper delivery; that a proper receipt from the consignee be prima facie evidence of such delivery, and that liability under bill of lading exists from the time the carrier receipts for the goods until the carrier gets consignee's receipts for them, or within a reasonable time after offering the goods to the consignee. in the event they decline to accept them.

4. Arrival of goods in damaged condition, or nondelivery from any cause shall constitute a claim against the carrier, and the burden of proof to show he is not liable shall be upon the carrier.

5. That shippers must make a truthful statement of their shipments, describing the kind, amount, weight, and value of the same; the particulars in the bill of lading to agree with the consular invoice.

6. That consignee be given reasonable time for filing claims and commencement of suit.

We would like to see added to this that the original carrier be held liable right through and each carrier protect itself by a series of receipts which they could obtain from the succeeding carrier until the consignee was reached. but this probably can not be done at the present time.

Most bills of lading now contain clauses which we think are illegal. and I would like to submit two bills of lading that I have here with the clauses which I have indicated.

Mr. EDMONDS. You mean they are illegal in view of the Supreme Court's decision on the Harter Act?

Mr. MCCOMB. Even without the Supreme Court's decision I think they are illegal. The Harter Act in section 2 requires that the carrier carefully handle the cargo, and carefully and properly deliver same. Now, this bill of lading says:

> The carrier shall in no event be or be held liable for loss of, or damage to, any merchandise after it is unhooked from vessel's tackle at port of discharge.

Then it goes on and says that they can throw it overboard if they want to. It goes on:

> Carrier, at its option, shall have all rights and benefits granted to shipowners limiting, or permitting a limitation of their liability by the laws and/or customs of any other State and/or country into a port of which said vessel may enter, or at which she may touch.

Now, this contract is made in the United States and should be carried out under the laws of the United States, and I do not think a steamship company under the law has a right to put that in their bill of lading. They add:

> Carriers shall not be, or be held, liable for, any loss of, or damage to, any of said merchandise resulting from any of the following causes, to wit: Acts of God, perils of the sea or other waters, war, enemies, privateers, letters of marque and reprisal, pirates, thieves, robbers, arrests or restraint of princes or rulers or people, acts or takings or claims or restraint of Government or municipal or de facto officers, whether acting with or without lawful authority, legal process, attachments, quarantine and sanitary measures, barratry of master or crew, rising of passengers,

And so forth.

Now, the crew are the employees of the shipowner, and I do not think the shipowner has any legal right to contract himself out of the actions of the crew. Then it says:

Carriers, owners, charterers, or agents shall not become or be held responsible for any loss or damage that shall result from fault or error in management of vessel, or its engines, boilers, winches, hoisting gear, fittings, fixtures, equipment, ports, hatches, dead light, before or after sailing, or be in port or at sea or from any other causes of what kind soever.

The Harter Act requires that he properly handle and stow the cargo. Now he is getting exemption here for his steam winches and his loading gear. That is a violation of law, I think. Then the bill of lading also contains the following:

Any omission to exercise such due diligence shall not be presumed; but the same must, if claimed or alleged, be proved by the shipper.

Now, a man here ships some goods to England and they are turned out of the steamer damaged; under this he has to prove his case against the shipowner. Now, actually the shipowners—the men on the ship—are the only ones who know how that damage happened or could have happened, and they can explain and would have to prove they are not liable. The shipper can not prove he is liable.

Still another section of the bill of lading provides:

Neither fault nor failure nor improper loading nor bad stowage, nor improper custody, nor want of due care, nor improper delivery of merchandise by carrier shall be presumed, but same must, if alleged, be proved by shipper or consignee.

That furnishes another illustration of the same thing. That is, I think, contrary to the Harter Act.

It is further stipulated and agreed that vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers, and crew have secured or may secure it.

Now, the Harter Act says distinctly that the shipowner must provide a seaworthy boat, and in the case of the *Carib Prince* the Supreme Court of the United States maintained that they must have a seaworthy boat. Here he says he only agrees to make it seaworthy in so far as hiring proper master and crew makes it seaworthy—passing the buck.

Then another clause provides:

Carriers shall never be liable for any loss of, or damage to, said merchandise, nor for any damage or loss suffered in connection therewith, unless its neglect or willful default is shown to have been the sole cause of the same.

I think that is illegal.

If carrier becomes liable for any damage or loss to said merchandise, it shall have the benefit of all insurance on said merchandise, and of any payments made by or on behalf of the insurer thereof, whether under the guise of advances, loans, or otherwise; and shall also have the benefit of all loans, the amount of which have been determined by the total amount or part of any loss or damage to said merchandise, made the owner by the insurer thereof, and induced by the existence of the insurance upon said merchandise, and which are made repayable only in the event recovery of said loss or damage is had from the carrier or said vessel. The right of any such insurance, advances, or loans may be offset in the amount thereof by carrier against the claim or suit for said loss or damage.

Now, if that is not illegal, I think it is certainly against public policy. A shipper of goods takes out insurance, pays the premium on it; here is the shipowner, who does not pay a premium, and who tries

to evade his liability by taking advantage of insurance that another man has paid for. I think it is dishonest, if it is not illegal.

This bill of lading goes further and says:

Carrier shall not be liable for any loss which can be insured against.

Now, if you only pay premium enough you can insure against anything, and he might just as well say the carrier is liable for nothing whatever. That is all this bill of lading is equivalent to.

Then the carrier proceeds to limit itself to $100 in any event.

Also, that if the ship is prevented by quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith, without previous notice to shipper, owner, or consignee, discharged into depots, lazarettes, hulks, crafts, or lighters at the risk and expense of shipper, owner, and consignee; all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility, and expenses of the carrier therefor, as carriers, bailee, or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred and all increased cost of such delivery shall be paid by shipper, owner, and consignee, all and any of them, the carrier retaining a lien on the goods therefor.

The extra charge becomes a lien on the goods. Then the bill of lading also provides:

It is expressly stipulated that if said merchandise need be lightered at any time or port or place all lighterage services rendered shall be and be deemed to have been rendered by an independent carrier or person; if such services be procured by carrier, they shall be deemed to be and to have been so procured by it acting as agent therefor of shipper, and carrier's liability as carrier at any port or place where such lighterage be needed shall end immediately vessel be anchored at or near the said port or place. Carrier's liability after steamer be at anchor at or near to said port of delivery shall be that of warehouseman only, and said merchandise after unhooked from ship's tackles at such anchorage shall be at owner's risk.

And the Harter Act compels a shipowner to make proper delivery. I think that is illegal.

And, finally, in accepting this bill of lading, the shipper, owner, and consignee of the goods and the holder of the bill of lading agree to be bound by all its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder.

Mr. LEHLBACH. Is there any liability left whatsoever to the shipowner under such a bill of lading?

Mr. MCCOMB. That, I think, is the best one I found. Here is another bill of lading. They have got most of the preceding clauses, and they have got one or two in addition. I would like to point out a couple of them. This is the Cosmopolitan Line. This one starts with:

It is mutually agreed that the ship shall have liberty to sail with or without pilots, to carry goods on deck at risk of owners of the goods, to tow and assist vessels in need, and to deviate for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods; and in case the ship shall put into a port of refuge or be prevented from any cause from proceeding in the ordinary course of her voyage to transship the goods to their destination by any other steamship; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by robbers and/or thieves on land or sea; by arrest or restraint of princes, rulers, or people, riots, strikes, mutiny, combination, or crew; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances.

There the carrier exempts itself from its lighterage risk, which is part of making delivery, and also exempts itself from the acts of the crew, its own servants. It exempts itself from latent defects. There, I think, are three points in violation of the Harter Act.

In another place the bill of lading says:

Also that single packages exceeding 2 tons in weight shall be liable to pay extra charges, if any, for loading, handling, transshipping, or discharging. Also that the steamer or any of the servants of the company shall not be liable for any damage or loss occurring from any accident in loading, handling, discharging, or transshipping of packages exceeding 2 tons in weight. And in case of any damage or loss resulting to the steamer, cargo, lighters, cranes, or hoisting tackle, owing to incorrect weight having been declared, the shippers and/or consignees of such cargo shall be responsible for such loss or damage. The stipulations for relief of carrier or vessel from liability for negligence shall be inoperative so far as unauthorized by the Harter Act.

The carrier thought it was getting pretty close there itself.

Another provision is:

Also, that if any bag or baled goods are landed slack or torn the consignees shall accept such portions of the sweepings as shall be allotted by the steamer's agent, and the same shall be deemed a full settlement of any claim for losses in weight.

[Laughter.]

Also, that glass is only accepted for carriage and shipped on condition that the carrier shall not be liable for breakage of same, however such breakage may be caused, even if by bad stowage, rough handling, or negligence on the part of any servant of the shipowner, before or after the commencement of the voyage.

Mr. LEHLBACH. Mr. McComb, will you put into the record the name of the company whose bill of lading you first read?

Mr. MCCOMB. I am going to give you these two: The first one is the Dollar Line—the Robert Dollar Line—and the second is the Cosmopolitan Line.

Mr. LEHLBACH. What one are you reading from?

Mr. MCCOMB. The Cosmopolitan Line.

Mr. LOINES. Operating Shipping Board ships only. [Laughter.]

Mr. MCCOMB. Well, they have got this $100 clause in here, and then they say:

In no event shall the carrier be liable for more than invoice or declared value of goods, whichever shall be the least, not including prepaid freight. * * * Neither the carrier nor its property shall be held liable for the nondelivery of any goods not received on board the vessel at point of shipment regardless of any acknowledgment or receipt contained in this bill of lading.

Now, under this they give you a receipt that they have got the goods, but unless you can positively prove that they put the goods on board the ship you have got no claim therefor. They simply say: "We never got the goods; we never loaded the goods on board the ship," and in some cases they do not deny it, but they put a rubber stamp on, "Not liable for any loss by theft or pilferage."

Mr. CAMPBELL. You are not stating that as a law given you by the consul?

Mr. MCCOMB. The consul had nothing to do with this. I am simply stating what these steamship companies do. I do not assume it is law.

Mr. CAMPBELL. You are advising the committee about what is illegal.

Mr. McCOMB. No; I am just giving this as my opinion. This is only a layman's opinion, who knows very little about law.

This bill of lading says [reading]:

> The steamer and owners shall not be held liable for any damage to the within cargo resulting from carriage or towage with, or proximity to, or the effect of other cargo, of whatever kind on board. * * *
>
> Also when goods are carried at through rates or consigned from or to places beyond the port of loading and/or the port of discharge, the responsibility of shipowner does not commence before actual shipment on board or continue beyond discharge of vessel, shipowner's responsibility being limited to the time goods are actually on board ship.

Those are two bills of lading. Here is another one. This is not a bill of lading that is in use; it is the bill of lading that was suggested by the Chamber of Commerce of the United States to form the basis of a uniform international line of bills of lading, and that has in it some of the same defects. This is a big improvement over those others, but in this we feel that if the committee is going to suggest a form of bill of lading, and this is submitted to it, that we would like to make objections to paragraphs 1, 4, 5, 7, 8, 9, 14, and 15. I can write you on that in full later.

Those two—the *Robert Dollar* and the *Cosmopolitan* bills of lading—are bills of lading that are actually in force, and I thought it might be well to point out to the committee just what kind of contract they have got.

Mr. LEHLBACH. Does that complete your statement, Mr. McComb?

Mr. McCOMB. Yes.

Mr. LEHLBACH. Are there any questions, gentlemen?

Mr. KIRKPATRICK. I want to ask one question. You said that the Bull Line was successfully coping with some of the difficulties that they met. What do they do?

Mr. McCOMB. As I understand it, they have a special form of bill of lading, assuming responsibility for which there is an additional charge made, and they have one end of their pier railed off with an iron rail, and two men, with night sticks there, and when those goods are brought in they carefully watch them taken off the truck and put on the pier, and count each one of them, and then they give the man a receipt for them. They are watched by two men all the time. There is a particular hold assigned to those goods, and after they are loaded and the hatch cover is put on, the hatch is sealed and locked with Yale locks, and there is nobody on board the boat who has a key to to those locks. The superintendent at the other end of the line has the key, and when the boat gets down there that is unlocked and opened up and tallied out as it is taken out of the hold and put on the dock, and it is put in behind a railed section of the pier, an iron rail, and men with clubs, and then it is handed over to the consignee.

In other words, it is guarded every minute; each step is checked. But it is a demonstration of what can be done. In many cases on some of the other lines the crew help themselves to the cargo. There are any number of cases where it is believed that the steamship people knew goods on their pier were being stolen. But, as I say, starting with the truckmen—there was an organized gang of truckmen in New York who had a place up on Mercer Street. They would come for a man's goods, drive the truck down there, and then the next day they would get a case—it might have been the same one, or they

would get one of similar dimensions and weight, and the same marking—and substitute it for the original case. Cases have been opened up abroad that have been full of bricks, full of newspapers, and rubbish. In some cases the shippers have had the cases sent back to this country, so they could examine what was in them.

Mr. CAMPBELL. Mr. McComb, considering all the theft and pilferage losses that your companies pay, can you advise us what parts have occurred while the goods were in custody of the carrier?

Mr. MCCOMB. Well, that is very hard to say, because you are advised, say, that the case gets to Copenhagen, and it is opened and does not contain what it is supposed to have contained; it is hard to say at what point in the trip the substitution was made.

Mr. CAMPBELL. Are you insuring theft and pilferage under warehouse clauses? Is that customary?

Mr. MCCOMB. Yes.

Mr. CAMPBELL. Now, can you tell this committee, then, what proportion of the losses paid for theft and pilferage have occurred while the goods were in the custody of the shipowner? He is the man you are striking at. Now, what proportion occur while the goods are in the custody of the shipowner?

Mr. MCCOMB. I am not striking at the shipowner any more than any other man.

Mr. CAMPBELL. The underwriters here are striking at the very vitals of American shipping, the American shipowner.

Mr. MCCOMB. I suggested that all carriers be held liable. We are not striking at the shipowner particularly. We want to see the American shipowner and American shipping built up.

Mr. CAMPBELL. Can you tell us what proportion of the losses have occurred while the goods are in the custody of the carrier?

Mr. MCCÓMB. No, sir.

Mr. RUSH. I thought it was a rule of the committee that there should be no cross-examination of witnesses.

Mr. CAMPBELL. I was not here when that announcement was made, and I assume that this hearing was called by the committee with the desire to get at the bottom of the facts of this great problem, and it can not be reached by ex parte statements which those who happen to know, know are not entirely correct. Those parties have a right to question the witnesses.

Mr. LEHLBACH. The Chair announced at the beginning of the hearing that both in the interest of expedition and orderly procedure questions would be limited to members of the committee and those who officially sat with the committee, and that comments and cross-examination on the part of spectators of those who subsequently intended to be witnesses would be eliminated, and the Chair suggested that if erroneous statements of fact or expressions of opinion were uttered in the course of the testimony of witnesses, that those who took issue would have ample opportunity in their own time to correct them.

Mr. CAMPBELL. Mr. Chairman, I represent the American Steamship Owners' Association, which represents in its membership 80 per cent and over of the privately owned American tonnage. We are not sitting at the table here. You have sitting with you Dr. Huebner, an insurance expert, who was, and perhaps is, the expert of

the Shipping Board; also a shipowner sitting there with the privilege of answering questions. To our best knowledge, Dr. Huebner has been in close consultation with the underwriters on this whole plan. You also have the representative of the Shipping Board sitting there, but the shipowner, at whom this legislation is striking, if it is striking at anybody, is supposed to sit in the background without the right to ask any questions pertaining to the matters which are laid before the committee, which we believe to be erroneous. Now, I assume—I am not personally acquainted with you, but I am personally acquainted with some of the other members of the committee—and I know that you want the facts.

Mr. LEHLBACH. Surely, we want the facts.

Mr. CAMPBELL. You can not get the facts unless there are questions asked of the witnesses.

Mr. LEHLBACH. The fact is that Dr. Huebner is sitting here as advisor of both the committee and the Shipping Board with respect to insurance questions. Commissioner Lissner, a member of the Shipping Board, who was here this morning and who is in attendance and will be more or less at these hearings, and Mr. Gaines, of the Shipping Board, are sitting here with the committee as representatives of the Government, who desire to ascertain whether ways and means could be found to check what has been represented to the committee as a great waste. I think the committee can take care of the interests of all who are concerned in this problem, and can certainly afford as much opportunity to anyone who desires to speak for the shipowners, when it recognizes them in their own time, as if it should permit them to interrupt and argue with witnesses in the course of their development of their own views on the subject. I did recognize you expressly, Mr. Campbell, to ask a question or two, because I think every rule is to be enforced within the limits of common sense and reason, but it is the policy, and the committee determined before it opened this question that it would be its policy, not to permit the indulgence of crimination and recrimination between adverse interests in the course of the hearing, and that the views of the shipowners, the views of the shipper, and the views of the marine underwriters can be fully presented in their own time. They will have a knowledge of what each other says, and will have opportunity to answer those statements then.

Mr. CAMPBELL. The question does not go to the question of our views. We may differ on the matter of theories and principles, but when you shut off the right to ask the other side regarding facts which they state to the committee, are you not limiting your examination and your hearing here unreasonably?

Mr. LEHLBACH. Certainly not. Why can not a misstatement of fact be corrected by a person having a knowledge of the true situation in his own time, as well as by throwing it at the person who is making the misstatement?

Mr. CAMPBELL. I think that is true. You have got one against the other then, but some of these questions go beyond misstatements. For instance, asking him whether or not he can tell us what percentage of pilfering losses occurred while the goods were in the custody of the carrier goes right to the very vitals of this whole thing. That is

not questioning a misstatement; that is asking for facts. If Mr. McComb can not answer it, I would like to ask Mr. Rush if he can answer it. Can you tell us, Mr. Rush, what proportion of pilfering losses occur while the goods are in the custody of the carrier?

Mr. RUSH. Do I have to answer that now, or after Mr. Campbell has brought out his side?

Mr. LEHLBACH. You can exercise your own discretion in that regard.

Mr. RUSH. By far the largest portion of it occurs while the goods are in the hands of the common carrier. The truckman is a common carrier; the lighterman is a common carrier; the steamship company is a common carrier; and the only portion which does not occur while it is in the hands of the common carrier is that small amount of theft that comes from the shipper's own employees, and that amount which comes from the handling by the customhouse employees, for which the common carrier is not liable. The greater portion of it comes while it is in the hands of the common carrier, Mr. Campbell, in my humble opinion.

Mr. CAMPBELL. Now, may I ask another question? You went further than I wanted you to [laughter]. That answer is very necessarily true, but what proportion of these losses occur while the goods are in the custody of the shipowners? That is what I want to know. Can you tell me that from your figures?

Mr. RUSH. Not until you tell me in reply whether the shipowner is responsible or not for the truckman or the lighterman or what not?

Mr. CAMPBELL. That is a question of contractual liability. I am asking for facts. As a matter of fact, what proportion of these theft and pilferage losses occur, from your figures, while the goods are in the custody of the shipowner?

Mr. RUSH. If I answer it, can you prove it or disprove it? If you can, I will tell you they are all in his control.

Mr. CAMPBELL. Your refusal to answer shows that you can not answer the question.

One more question, Mr. McComb. You spoke of carriers which had changed their bills of lading since the operation of the war. I should like you to submit the names of those carriers whom you know have changed the provisions of their bills of lading.

Mr. MCCOMB. I can get that for you.

Mr. CAMPBELL. You said that you knew. Can you give the names to the committee?

Mr. MCCOMB. I said the forms of bills of lading in use to-day are different from what they were before the war.

Mr. CAMPBELL. What carriers, can you tell us, have changed? I would like to get it so that the committee can check it up.

Mr. MCCOMB. One is the Dollar Line: that has a new bill of lading which they got out. I think, instead of answering that offhand, it would be a great deal better to get it from the various steamship companies which have put into effect their new bills of lading.

Mr. CAMPBELL. It happens that I drew that bill of lading long before the war broke out.

Mr. MCCOMB. Exactly in that form?

Mr. CAMPBELL. Substantially in that form.

Mr. EDMONDS. One question, Mr. McComb, what is P. and I.? Insurance?

Mr. McComb. Protection and indemnity.

Mr. Edmonds. Has that been in existence for a long time?

Mr. McComb. I really do not know.

Mr. Edmonds. Does it cover this kind of losses?

Mr. McComb. They can be covered by P. and I.

Mr. Edmonds. Have they been covered in it?

Mr. McComb. To some extent they have. I do not know to what extent, but some of them have; yes.

Mr. Edmonds. It is a mutual arrangement between shipowners?

Mr. McComb. Between different shipowners; liability insurance: that it what it is.

Mr. Campbell. They carry it mutually between each other?

Mr. McComb. Yes.

Mr. Edmonds. This pilfering, and so on, was at one time carried in the P. I.?

Mr. McComb. It is yet carried. I do not know to what extent.

Mr. Edmonds. Do they carry it all in the P. and I., when they carry it, or do they just carry part of it in the P. and I.?

Mr. McComb. The ones that are in a club or association include theft and pilferage.

Mr. Edmonds. They do it all? They do not insure with these companies, then, those that are in the P. and I.

Mr. McComb. No.

Mr. Edmonds. It is a separate institution altogether. Part of the insurance is written by one and part of it by the other?

Mr. McComb. The shipowners' liability is mostly done by mutual insurance.

Mr. Edmonds. Why do they not do it all by this mutual insurance?

Mr. McComb. It is mutual; insurance companies originally were insuring all risks with the stock companies that the marine companies did not assume. There is one thing, in England the policy is to carry the three-quarters collision clause, the idea being that if the owner had to pay one-fourth of his collision losses he would be more careful. That one-fourth of the collision is assumed by the shipowners mutually.

Mr. Edmonds. That is, of collision. In pilferage they do not assume any of the P. and I.?

Mr. McComb. P. and I. losses cover shipowners' liability in respect to cargo claims.

Mr. Edmonds. They do cover it?

Mr. McComb. Yes.

Mr. Edmonds. Why, then, do they insure it if it is covered in the mutual arrangement? Why do they insure in the regular companies, then?

Mr. McComb. You mean when the shipowner insures, issues a bill of lading?

Mr. Edmonds. It is only the shipowners' liability that comes in there?

Mr. McComb. That is all.

Mr. Edmonds. He covers his $100 liability in the bill of lading, but he does not cover the balance of it?

Mr. McComb. The shipowner frequently insures the shipper rather for the account of the shipper. He agrees to assume that he will insure with the marine company to cover the marine perils.

Mr. EDMONDS. Why does he not put it in the P. and I.?

Mr. MCCOMB. Because the P. and I. only covers shipowners' liability. It is a liability proposition pure and simple. The P. and I. does not cover marine business.

Mr. EDMONDS. He assumes the shippers' liability of losses?

Mr. MCCOMB. It would be considered a straight marine loss, a loss by fire. P. and I. is the shipowners' liability.

Mr. EDMONDS. It covers a personal liability also?

Mr. MCCOMB. Yes, sir.

Mr. EDMONDS. I should say it covers pilferage sometimes.

Mr. MCCOMB. That is his liability. If he contracts and the shipowner is called upon to deliver the goods, he is taking across and agrees to deliver them and he has a fire and is made liable for that, then the P. and I. would cover what he is held liable for.

Mr. EDMONDS. Wouldn't it be cheaper not to insure his goods at all and then require the shipowner to cover it in the P. and I.? I do not suppose he could do that because of the limited liability in the contract.

Mr. MCCOMB. That is what establishes the shipowners' liability.

Mr. KIRKPATRICK. P. and I. covers the $100.

(The following letter was ordered printed in the record:)

MARINE OFFICE OF AMERICA,
New York, July 25, 1921.

HON. GEO. W. EDMONDS,
House of Representatives, Washington, D. C.

DEAR SIR: I should like to supplement my testimony in reference to the above to emphasize the importance of proper delivery.

Section 1 of the Harter Act makes it unlawful for a shipowner to insert any clause whereby they shall be relieved from liability for failure in making proper delivery of merchandise committed to their charge, and section 2 of this act makes it illegal to enter into any agreement whereby the obligation to properly deliver same shall in anywise be lessened, weakened, or avoided.

Many steamship companies insert clauses in their bills of ladings which undoubtedly have an effect of relieving them from liability in respect to proper delivery, and certainly their obligation to properly deliver same is lessened, weakened, or avoided altogether.

Such clauses as the following appear in the bills of lading:

"The carrier's responsibility in respect of the goods as a carrier shall not attach until the goods are actually loaded for transportation upon the vessel, and shall terminate, without notice, as soon as the goods leave the vessel's tackles at destination or other place where the carrier is authorized to make delivery or end its responsibility." Under this clause the carrier is permitted to discharge the goods from the vessel without notice to the consignee and end its responsibility immediately on discharge.

"If the vessel is prevented by quarantine from reaching her destination or from making due delivery of goods, or is detained at quarantine, the goods may be forthwith, without notice, discharged into lazarettos, craft, or other places immediately available, at the risk and expense of the shipper, consignee, and/or assigns, and such discharge shall be a complete delivery of the goods hereunder, and all responsibility of the carrier is ended without notice as soon as the goods leave the ship's tackles. If by reason of quarantine, blockade, condition of surf or weather, shortage of lighters, riots, or strikes, lockouts, stoppage or shortage of labor, of the carrier's employees or otherwise, or other conditions, existing at the port of transshipment or discharge of the goods or elsewhere, or by reason of any of the excepted causes mentioned elsewhere, or by reason of any of the excepted causes mentioned elsewhere in this bill of lading * * * the goods may be discharged at any other port according to the convenience of the vessel.

A steamer may commence discharging immediately on arrival and discharge "continously day or night, Sundays or holidays, any custom to the contrary

notwithstanding. * * * and if the goods be not taken from the steamer by the consignee directly they come to hand in the discharging of the steamer, the master or steamer's agent may be at liberty to enter and land the goods or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred. * * * Neither the carrier nor its property shall be held liable for the nondelivery of any goods not received on board the vessel at point of shipment, regardless of any acknowledgment or receipt contained in this bill of lading. * * * The master or agent of the vessel is authorized at the expense and risk and for the account of the shipper, consignee, and/or assigns, without notice to enter and discharge the goods, depositing them in hulk or craft or in or upon wharf, warehouse, public stores, or customhouse, or permitting them to lie where landed, or making such disposition thereof as the authorities of the port may direct, subject at all times to any lien of the carrier, including storage charges by the carrier, and to that end to employ such lightermen, truckmen, warehousemen, wharfingers, or other agencies * * * who shall be deemed agents solely of shipper, consignee, and/or assigns, and not of the carrier, the latter being hereby relieved of all responsibility for or in respect of the goods, without notice to any person whatever as soon as the goods leave the vessel's tackle."

There are many clauses of similar import in these bills of lading, but the net result of them all is to give the carrier the right to either bring the goods to the port to which they are consigned or any other port and there, without any notice to the assured, to put them on a dock or have them lightered ashore. In respect to lightering goods, the steamship agent has the liberty to make a contract with lightermen, exempting them from all liability, and the steamship company's liability ceases when they put the goods aboard the lighter. If the consignee does not receive all the goods shipped to him, he has to prove two things. First, that the goods were loaded on the ship, as the steamship company specifically provides. (The bill of lading, which is an acknowledgment that the goods have been received and is a receipt for the goods, is of no effect unless you can prove that goods were loaded on the ship.) This is difficult to prove if the steamship people try to prevent you from proving it. However, after proving that they did load the goods aboard the ship, it is necessary to prove that they delivered these goods to a lighterman. The lighterman is exempted from all liability and is employed by the steamship company, even though it is for the account of the shipper or consignee. The steamship company can select for lightermen only those who will not keep track of what is put on their lighters. As they have no responsibility, there is no necessity for them to keep track of what is loaded on their lighters nor what they put ashore. Therefore, it is very difficult to prove that the steamship company did not deliver the goods to the lighterman. The lighterman can store them on board his lighter without giving any notice to the consignee and run up storage charges, or can put them on an open pier without notice to the consignee. When the consignee is ultimately able to locate his goods, some of them may be missing, and it is almost an impossibility to tell where the shortage took place, and it would not be surprising if the steamship company blamed the shortage on the lighterman.

The following is a letter from a steamship company, showing that it is a custom to load their cargoes into lighters, and their responsibility ends when the cargoes are put aboard the lighters:

"Cargo on the west coast is delivered by steamer into lighters alongside, where ship's responsibility ceases.

"The cargo is taken from the lighters in the customhouse for examination and is held pending presentation of bill of lading and consular invoice and then released, upon the payment of duties and charges, to the legal claimants.

"The agent of the steamer has no jurisdiction over the cargo after it leaves the ship."

I believe that it is the nonobservance of the feature of making proper delivery that is responsible for the great amount of shortage.

No matter what kind of regulations we may make in this country in reference to carriers, Congress has no authority over any concern which operates exclusively in a foreign country, such as lightermen, and it will be necessary to make some reciprocal arrangements with foreign countries, under which lightermen, truckmen, and other similar carriers can be held responsible.

The report of the imperial shipping committee, paragraph 41, page 10, states that this should be the subject of representation and other pressure upon the governments or authorities responsible.

In case of a shipment from Chicago to Paris, the ocean steamer which takes the goods across the Atlantic is only one of a number of carriers who will have jurisdiction over the goods during their entire voyage, and we will not have a proper system of transportation until arrangements are effected whereby the original carrier in Chicago may issue a bill of lading which will be binding on all subsequent carriers until the goods are delivered to the consignee in Paris and a receipt is obtained from him.

Our laws can be made to cover the railroad and steamship journey from here, but it will require an international agreement to hold carriers abroad under bills of lading issued here. I do not believe that proper delivery can be overemphasized.

In reference to the crews of steamships stealing goods, the following is an extract from a letter written by the American Consulate General, dated Habana, Cuba, October 18, 1920, addressed to the Hon. The Secretary of State, Washington, D. C.:

"In view of the circumstances which will be related hereafter, I authorized the captain of the port to send the members of the crew to the immigration station as fast as encountered, to be retained there subject to my orders. It becomes my duty to state here that a number of these men protested to Mr. Lathrop against being sent to the immigration camp, maintaining that they had ample funds to take care of themselves, and this in spite of the captain having been unable to make any advances to them for a matter of three weeks through lack of funds."

This was a case where it had been suspected that this crew were profiting by the sale of the cargo.

Inclosed is an article from the New York Sun to the effect that Stephen J. Dunleavy of the International Mercantile Marine stated to Judge Samuel Fleischmann in Jefferson Market Court that in his opinion at least $5,000,000 worth of stuff had been stolen from that steamship company during the last year.

Respectfully, yours,

S. D. McComb, *Manager*.

P. S.—The bills of lading from which the above have been quoted are inclosed herewith, with paragraphs marked "X."

STATEMENT OF MR. LOUIS F. BURKE, OF SOUTH ORANGE, N. J.

Mr. Burke. I am one of the marine managers of the Home Insurance Co.

Mr. Chairman and gentlemen, I want to indorse the statements of Mr. Rush and of Mr. Winter and to agree with them in the remedies they have suggested. I shall not take very much of your time. I want to say, as a preliminary, that I will not undertake to discuss the overseas carriers of merchandise, because it has been the custom of our office to avoid theft and pilferage, which is particularly under discussion, for the reason that our observation has been that it is rather a disastrous part of the business. While we can not avoid doing it in all cases, the bulk of that which we do is not sufficient to base any really valuable statistics upon. We have been for a great many years interested in the insurance of goods during land transit and while in coastwise ships.

I may say that underwriters, like most other people, can be separated into two groups, roughly, those who learn by their mistakes and those who do not. I think nations might very well be so classified, too. This country has had a doctrine, which is an ancient one, that a carrier may not exempt himself by contract from the results of his own negligence, and there has grown up around that doctrine

a system of practices which have had the countenance of the courts, to a more or less extent, which has permitted the carrier, by cleverly drawn clauses, to contravene the intention of the common law, and practically exempt himself from everything but the negligence liability.

I think that no class of people connected with American commerce know more definitely the results of that departure from fundamental honesty and integrity than do the underwriters. They have had to pay the bills. It has been the experience of all underwriters that as the carrier has succeeded in either limiting or exempting himself from his liability, his care of what was committed to his care has slackened, and the evils which are upon us to-day have been a steady and very natural growth of practices which have crept in upon the business. No sane man would undertake to deal with a bank on the principle that, provided the bank secures a safe vault in its banking room, it should not be responsible for any negligence in the care of its depositors' funds; yet in such a case as that you would merely lose the money which you had on deposit with the bank. The losses which the merchant suffers from committing his goods to the carrier are not limited by the value of these goods and are not compensated for by the replacement of money which those goods were worth. He loses what is much more valuable to him in many cases. He loses the good will of his customers, and ultimately, if such practices proceed, he loses his market, and so there is beyond the money value of the goods themselves a vast loss which can not be computed. It is the observation of all of us that within the last few years, particularly theft and pilferage, losses have very greatly increased. I wish that Mr. Lissner were here, because he asked a former witness a question which I was in position to answer. He asked if any estimate could be given of the increase or otherwise of losses of goods carried by land carriers. I want to say that we have statistics from our own office which show that during the years 1916 to 1920, inclusive, as compared with the years of 1911 to 1915, inclusive—that is, two periods of five years—that the losses by land carriers increased a trifle less than 1 per cent of three times the former losses. In other words, in the first period of five years the loss ratio was 44.31 per cent. In the last five years the loss ratio was 132.53 per cent. So that taken together the loss ratio over 10 years showed a very heavy loss, but not quite 100 per cent—very nearly. So the losses of the last five years spoiled the record of 10 years. Now, I may further say that that loss of 132 per cent during the last five years is not spread evenly over the whole five years. During that five years the first year or two of the five years developed a vast increase in the percentage of losses, and it became necesary for us to so reform our underwriting as to try to get rid of the things that were bringing the heaviest losses, the conditions of the policies and kind of merchandise. We found it necessary to eliminate from our coverages certain kinds of merchandise. Let me enumerate, to give you an idea. We refused not only to insure shipments of gloves but of ostrich feathers, furs, ready-made clothing, shoes, and rubbers goods, such as rubber overshoes, etc.

Mr. Lehlbach. This is on the land carriers.

Mr. Burke. On land carriers. Then, on further dissecting our business we found that there are certain lines of goods that were

particularly susceptible to pilferage, and we refused to write those classes of goods against pilferage. But in spite of this elimination and discrimination against the highly liable goods the last period of five years was nearly three times—almost exactly three times—what it was the previous five years.

With regard to coastwise carriers, the situation was not quite so grave. In the second five years as compared with the first five years, the losses very nearly doubled but not quite. The fact that they did not increase more than they did was also due to a reform in the kind of underwriting we did—the people whom we insured, and the conditions under which we insured them, and the kind of goods which we would consent to cover. Almost the entire increase in the loss ratio has been due to theft and pilferage. There are some kinds of goods, some classes of trade that we have had to say we absolutely will not write at any entertainable rate and many others in the last five years have increased the premium as much as 300 per cent, and still the loss ratio stands as I have stated.

I think that is all I have to say to you, gentlemen, I thank you.

Mr. LEHLBACH. If there are no questions of Mr. Burke, the next witness will proceed.

STATEMENT OF MR. WILLIAM H. McGEE OF WILLIAM H. McGEE CO.

Mr. McGEE. I represent the marine managers, managers of marine insurance departments in the St. Paul Fire & Marine Insurance Co., the Phoenix Insurance Company of Hartford, the Great American Insurance Company of New York, the Providence Insurance Company of Providence, and a number of others. It is not necessary to detail them.

Gentlemen, I would like to indorse the résumé of this situation that was given by Mr. Rush. I think that he has covered the ground pretty thoroughly. Mr. Winter has likewise covered the main points which I also indorse. I say that rather than to traverse again the ground that they have once gone over.

It seems to me, Mr. Chairman, that this question which is before your committee is after all an exceedingly simple one; rather it is not at all complicated. It is really very simple. I think it very largely represents or conveys this question. Shall we or shall we not go back to the Harter Act? Shall we restore that part of the Harter Act which the courts have whittled away? Shall we or shall we not stop a very bad leak? The Harter Act as it was enacted covered all that the underwriters say that it is necessary to do in this situation. We do not think that it is necessary to go far afield and introduce a lot of reforms or introduce new methods to complicate the situation. If we can get back to the Harter Act we will have covered the ground. If we can get back to what it was intended to do we have covered the ground. The Harter Act was pretty well tried out. It produced most excellent results, and after its enactment and after it had been tried out, Canada and Australia first adopted it. From present appearances it looks very much as if England is likely to adopt something of this same kind.

I do not think anyone expects the shipowners to do all these things for nothing. The shipowner should receive proper compensation for

the services he renders and for the liabilities that he assumes. The ways and means of arriving at that are mere matters of detail, and I believe that these things would very quickly adjust themselves. I think the competition between the various steamship lines would very quickly bring the thing to a standard basis. Mr. McComb has read to you two or three bills of lading. He has brought out a great many interesting facts. He has brought out some details that I was not altogether familiar with. The shipowners by one means and another have evolved a very elaborate document that is confusing even to lawyers. It is extremely confusing; it is extremely contradictory; and I think that all the layman can read out of the usual form of bill of lading is that Mr. Shipowner contracts to do absolutely nothing but to receive freight and take precious good care that he does, because he wants his freights. If the shipowner takes back this thing, if there is put upon the shoulders of the shipowner those liabilities and responsibilities which he is shirking and denying by subterfuge and by curious devices, he can take care of himself. If the shipowner receives my goods or yours and he acknowledges that he received them in apparent good order, why is he not responsible for the safe delivery of these goods, for the safe custody of them, and for the care of them? Certainly no one but he can do it. The owner of the merchandise can not follow them through. They are entirely out of the merchant's hands, and if the shipowner does assume these things, is it going to be such a terrible burden upon him? The obligation of the shipowner is to take right and proper care of the goods. I do not think that anything of an unreasonable character is asked of him. I was not aware of the manner in which the Bull Line were able to protect special goods. If they can do it with such shipments as are made under that particular form of bill of lading, why not do it with all?

The question of P. and I. insurance has been dwelt upon. I think there are very few people in this country that really thoroughly understand that subject. I certainly do not; but there are some features of it of which I think I have some knowledge. It may be shadowy, but my understanding is that P. and I. insurance is taken out, if not by all the shipowners, by a great many of them, by far, the vast majority of them, and the proposition of P. and I. insurance is to divide on some sort of equal basis between the various shipowners who become members of these clubs the losses they incur in the course of their trade. As an illustration of that, I believe that if one of the crew is injured P. and I. insurance covers it. If the shipowner must pay $100 for a case of goods which he has misdelivered or not delivered or carried on to another port or destination and piles up that with his list of overs, as I understand it, the P. and I. insurance pays him back that $100. In fact, I am inclined to believe that a great many of these clauses that are introduced into bills of lading are put there at the behest of those P. and I. clubs, of which there are quite a great many in England. I know of but one in this country, but I feel confident in my own mind that this whole bill-of-lading question comes back to what is more or less dictated to the shipowner by their P. and I. underwriters.

However that may be, if the shipowner must conform to the Harter Act and if the shipowner is restored to the position in which he was when the Harter Act was enacted, the shipowner has a remedy within his hands. He has a simple and more or less economical way of protecting himself. There is an economic principle involved in this whole matter of theft and pilferage, leakage, breakage, and things of that kind that are caused by the carelessness or recklessness or heedlessness or cheapness of the steamship operators, and that is the terrible waste which is going on. Goods which are stolen, goods which are badly stowed and therefore produce losses are economic waste, and can the United States or any other country go on permitting goods in these times to be wasted? It seems to me that the stoppage of waste is one of those things we need to restore the world's business equilibrium.

Furthermore, it seems to me that the attitude of the shipowners is an absolutely unmoral one. It is an unmoral situation. He takes my goods and he does what he pleases with them. I have no means of watching or caring for them. He either delivers them or does not deliver them and all of the facts concerning those goods are in his possession. They are not in mine; they are not available to me. I can only get them by going to his crew, going to his masters and mates, going to his records: it is within his power to conceal them from me. The situation is one which is and ever will be growing cumulatively worse as long as the shipowner or any other common carrier or any other bailee is permitted to contract himself out of any and every responsibility for goods which are necessarily in the course of every-day dealings intrusted into his care.

The bill of lading is full of words and clauses that are difficult to understand. When you talk about a bill of lading to a shipowner he immediately talks about his right to contract, his right to protect himself, but has he the right to contract himself out of his responsibility? The cargo owner certainly should have a right to contract and say what sort of a contract he would enter into: but, as a matter of practical business, in how many cases and how many steamship lines in New York or in any other part of the United States, does the shipper of merchandise, unless he happens to be a very big and a very powerful one—one who can operate his own ships if he so elects—in how many cases and how many times and how many shippers are there who can go to a steamship company and say, "Here are my goods: I want a clean bill of lading"? As a matter of fact, the great majority of shippers have to take the bill of lading which is presented to them. Transportation of goods is an all-important arm of the country's commerce, but it is not everything. The shipment of goods is very important.

I am inclined to think that the shipment of goods is vastly more than merely the question of the shipowners, because if there are no goods shipped there is no shipowning. There is no cure for this situation excepting through the person or the corporation which has physical possession of the goods. It is idle for the carrier to say that he can not guard and protect the property intrusted to him. Somebody must do it and no one but the persons who have physical control can do it.

The experiences with these things differ with different lines. There are some of the steamship lines which apparently have pretty

good records for the carriage of goods. They seem to have managed to guard the goods. Therefore, is not the whole question answered by the reluctance of the shipowners to incur the matter of costs of protecting the goods? Do not the evil conditions continue and grow only because the carrier is unwilling to take the proper care?

It is not a proper answer and is no answer at all to the situation to say that these things can be insured against. The loss is just as great. The economic waste is just as great. Because an insurance company has paid for the loss does not save the situation one bit. It really in some cases aggravates the question. The buyer of goods wants goods; he does not want insurance money. He wants to get his goods. He has bought his goods for the spring sale, he has bought his goods for the summer sale, and buys the goods in time to sell them to his customers. Instead of the goods he gets bricks or stone or paper or empty cases. He is left without the ability to sell goods. Before he can buy a fresh supply his season is past and gone. There has come to my attention a number of instances, a number of occasions, where shipments have arrived, for instance machinery, consisting of a number of parts, and very important parts of those machines have been missing. I know of one case where four separate and distinct shipments of those parts were made, and but one set got through to its destination, meaning that that machine was put out of commission for 18 months. Collecting three losses from the insurance company did not help that man a bit.

It is a terrible discouragement to the country's foreign commerce to have goods which should be received not received. Buyers in foreign countries get discouraged from buying goods in this country. They say what is the use, we can not get our goods; and buyers in foreign countries are being driven, and it is one of the reasons, I understand, that is given in a great many cases as to why instead of buying goods from American merchants they buy them from England or from somebody else where better care is taken of goods.

I would like to speak for a few moments about the bill of lading plan which was outlined by Mr. Robinson, and by the way, with all due deference to Mr. Robinson, and without any reflection upon him, he is not an underwriter, he is an insurance broker, and, therefore, as an insurance broker his point of view is somewhat different from the underwriters. The dual bill of lading scheme that he proposes seems to me to be an exceedingly complex matter. It seems to me to be a kind that would be exceedingly difficult to conduct. It seems to me that it would mean such an utter change of all business methods and shipping methods that it would be exceedingly destructive of commerce. It seems to me to aim at forcing a merchant and shipper to conform to a set of rules that would be very difficult for them to do. It seems to me that the result would be to drive our merchants and shippers under other flags than ours, under flags which would give to the shipper of goods the utmost freedom in certain respects.

If it were practical, if it were successful, it would mean that each individual shipowner would insure all of the goods on a ship and instead of having one insurance company to go to to collect all the claims, the shipper having the one insurance company from whom to collect all his claims, would be at the mercy of the shipowner at all times, and he would have a pretty hard time of it. It is pretty hard

for the shipper of goods to get any money out of the steamship company or railroad company in these days. If he was going to have to collect everything from them he would be in an impossible position. It would be impossible for a merchant to elect what kind of insurance he would accept, and I think you all know that every different merchant has his own particular pet way of insuring his goods. Some merchants who ship cottonseed oil in barrels, for instance, know so well the class of package that they use for shipping that they can control things in such a way that they are perfectly willing themselves to carry the risk of leakage, but other merchants may want to insure against it, although using precisely the same packages. They used to say the shipment of flour from the western cities of Europe could be insured under any one of about fifteen different forms of a policy, every one of them carrying a different rate of premium, but under a bill of lading scheme of this kind it would take such insurance as the shipowner has chosen to take out with his particular set of underwriters. A shipper by steamer A may insure under one way and a shipper by steamer B, owned by an entirely different steamship owner, in quite a different way.

Trade routes have not been very much changed in the past three or four years. They seem to be coming back pretty well to normal conditions, to normal routes. We have a great many new steamship lines, to be sure, but, after all, trade routes remain just about the same. The custom of issuing through bills of lading covering goods from the interior seems to have been resumed.

In using the word common carrier I think we are sometimes a little bit apt to think that means steamship companies alone. It does not. A truck man is a common carrier. A lighter man is a common carrier, and the lighter men very frequently are part and parcel of the steamship lines. A great many of the steamship lines have their own lighterage routes, and in those cases where goods are lightered the steamship company, as I understand, quite frequently sends their lighters over to places across the river so that the goods are really within the control of the steamship company in a great many of these cases.

I come right back to the one point which I tried to make in the beginning—that this situation is not a complicated one at all, that it is nothing more or less than restoring something which was in existence and which by one device and another has been whittled down so that the value of the Harter Act to-day has been practically destroyed.

I think that is about all I want to say except to indorse what has been said very largely by Mr. Rush, by Mr. Winter, and by Mr. Burke.

Mr. CAMPBELL. May I ask two questions?

Mr. LEHLBACH. If Mr. McGee is willing to answer them.

Mr. MCGEE. I am a most willing person when I know and understand a question.

Mr. CAMPBELL. I think from what you say that you are opposed to the system of insured bills of lading?

Mr. MCGEE. I am not; not necessarily.

Mr. CAMPBELL. Do you favor the steamship companies going into the practice of issuing insured bills of lading?

Mr. MCGEE. I think you would infer from what I have been saying about dual bills of lading that I was not.

Mr. CAMPBELL. You do not. I just wanted that clear.

Mr. McGee. There are proper things for the steamship owner to do, and there are things that may not be proper—or, I would rather say, that are not necessarily proper.

May I amplify that answer by saying one thing? I am not altogether in favor of it, because if they were issued I would be driven out of the business and I am in the insurance business.

Mr. Campbell. You would either be driven out of business or the shipper would be paying for two insurances?

Mr. McGee. That does not necessarily follow, because he may get under a bill of lading what you would call full insurance and yet not have full insurance according to his point of view.

Mr. Campbell. As a condition to insuring cargo have you ever endeavored to compel shippers to ship their goods under bills of lading where they deleted from them all those limitations upon their liability, and particularly deleted from them the loss-valuation clauses?

Mr. McGee. We have tried it in some cases. We had very poor success.

Mr. Campbell. Did the shipper refuse to do it?

Mr. McGee. Not necessarily. The shipper said, "Your competitor in that particular line of business takes these bills of lading, and I can not pay any higher rate of freight, and if the steamship owner deletes he wants something that I can not give him and remain in business."

Mr. Campbell. And incur higher freights?

Mr. McGee. Not merely a higher rate of freight, but prohibitive rate of freight.

Mr. Lehlbach. Mr. Johnston, do you wish to speak at length?

Mr. Johnston. Not at length.

STATEMENT OF J. F. JOHNSTON.

Mr Johnston. I am vice president of the Appleton & Cox Co. (Inc.), representing the United States Lloyds (Inc.). I will make my speech brief by confirming Mr. Rush's report in detail, and Mr. Winter's, and particularly following in close detail that of Mr. McGee's statement.

Mr. Lehlbach. Are there any more underwriters as such who desire to be heard at the present time? If not, the committee will stand in recess until 8 o'clock to-night, and will then hear the shippers.

Mr. Burchmore. Might I have one of the copies of Mr. Rush's statement, particularly the attachments to it, and return it here this evening or in the morning?

Mr. Lehlbach. Does Mr. Rush have copies to spare? The chairman himself has no copies at all, but if there are copies here and if they are available, I know of no reason why you should not.

Mr. Burchmore. I intended that same request to apply to the amendment offered.

Mr. Lehlbach. Let me make the suggestion that these documents, as far as the committee are concerned, are actually in the custody of the stenographer, who is supposed to incorporate them in the record of the meeting. If they are available there, there is no objection whatever. They will be permanent records and there is no objection to examining them or having access to them, but I simply say the chairman himself has not them in his possession.

Mr. CAMPBELL. Your notice to shipowners called for their presence on Wednesday. Are you going to go on to-night with to-morrow allocated to the shippers?

Mr. LEHLBACH. My own personal view was that we proceed with the shippers to-morrow, but it has been suggested that there are a great many witnesses representing the shippers and also the shipowners. It has been suggested to me that unless we sit to-night and hear in part some of the shippers we might not get through with them to-morrow and have the time on Wednesday for you gentlemen.

Mr. CAMPBELL. I just wanted to know if you were expecting us to be here to-morrow?

Mr. LEHLBACH. I want to make absolutely certain that the people presenting this question from the viewpoint of the shipowners should have just as ample and full opportunity to state their views and position as these other interests.

Mr. CAMPBELL. I know that.

Mr. LEHLBACH. If we get through with the shippers to-morrow I presume representatives of the shipowners would be here anyhow, because they want to hear what the other people are saying; so we can start right in with them.

Mr. CAMPBELL. This hearing was called and notice sent to us upon an investigation of theft and pilferage, and it seems to me to have turned into a hearing upon proposed amendments to the Harter Act; or is this an independent investigation?

Mr. LEHLBACH. Some individuals of the committee may have knowledge of proposed legislation, but no proposed legislation has been called to the attention of the committee and the committee has started out with absolutely a clean slate. It has not any remedies in mind, particularly, at all. It is seeking a remedy and is seeking suggestions of remedies.

Mr. CAMPBELL. It is an independent investigation, but not on pending legislation.

Mr. LEHLBACH. Absolutely independent.

The committee will stand in recess until 8 o'clock this evening.

(Thereupon the committee recessed until 8 o'clock p. m.)

EVENING SESSION.

The subcommittee reconvened at 8 o'clock p. m., pursuant to the taking of the recess, Hon. Frederick R. Lehlbach (chairman) presiding.

Mr. LEHLBACH. The first witness this evening is Mr. Herrick. Are you ready to proceed, Mr. Herrick?

Mr. HERRICK. Yes, sir.

Mr. LEHLBBACH. Will you give your name to the stenographer, and also state fully all the various interests you represent.

STATEMENT OF MR. CHARLES E. HERRICK, REPRESENTING THE INSTITUTE OF AMERICAN MEAT PACKERS.

Mr. HERRICK. I am chairman of the traffic committee of the Institute of American Meat Packers; I am a member of their foreign trade committee; I am chairman of the foreign trade committee of the Illinois Manufacturers Association; I am a member of the in-

terstate and foreign trade committee of the Chicago Association of Commerce; I am president of the World Trade Club. I mention all of these things simply to give you a little idea of my interest in foreign trade.

If the committee please, I would like to start back a little further, perhaps, than any of the discussion we have had to-day, and that is with the freight contract that the shipper enters into with the freight broker and the representative of the steamship line. It is our practice, as probably you know, to book our freight in advance with such agencies, and, as the packers are shippers almost exclusively of perishable products, great care must be taken in the selection of boats suitable to transport that kind of traffic. We select, therefore, with the greatest care we know how, a particular bottom to transport the shipment, only to find that the freight contract with all of its provisions is practically set aside by that provision in the bill of lading which stipulates that the bill of lading is subject to the terms and conditions of the ocean bill of lading in use by the carrier at the time the shipment moves. Therefore, regardless of the care we may take in making our preliminary arrangements, that may be all offset by the boat in question being withdrawn or diverted; or, at the convenience of the ocean carrier, another boat substituted in her place.

Against that we seem to have no recourse at present. In all contracts, for example, with buyers in Holland, it is especially stipulated that such shipments must come forward by direct boats, or else the buyer in Holland is privileged to reject the goods on their arrival over there. It has happened on not a few occasions that the boats that were scheduled to sail direct to Rotterdam, for example, have been diverted to other ports for the profit of the operating company; and, therefore, instead of Rotterdam being the first port of call, it may be even the fifth or sixth. This results in very considerable delay in the handling of these perishable shipments, and has, on a number of occasions, entailed a very serious loss. That is done entirely for the benefit of the ocean carrier and without our consent and over our protest. The idea of incorporating that sort of a provision in our contracts with the foreign buyer, with the Rotterdam buyer, is that, otherwise, he fears that through long delay after shipment has been made, through falling markets or on account of the goods becoming stale, or various reasons of that kind, there will result to him a very serious loss.

Not only do we have that to contend with, but in endeavoring to book this freight we have repeatedly asked for a copy of the ocean bill of lading that is to govern this particular contract. We are told in reply that that can not be furnished, and the reason given is that they do not know what sort of form of bill of lading will be in use when these goods reach seaboard. We are, therefore, compelled to accept a contract the terms of which we do not know and can not know. This works a great hardship on the shipper.

Further, I want to say a word in behalf of the beginners in export trade, of whom there are a number—especially at the inland points—who are not versed on the Harter Act and whose attorneys perhaps are not. The ordinary attorney at an inland point has had very little occasion to come in contact with marine law. He is not posted on it.

The shipper takes one of these bills of lading to his attorney and says, "I have suffered such and such a loss." The attorney proceeds to read that bill of lading and says, "Well, there is nothing you can do about it; you see, they have exempted themselves from liability in this bill of lading." That may be in direct opposition to the Harter Act, and in many cases no doubt is; but the shipper simply swallows his loss and, as a rule, does not make a second attempt at that kind of export business.

Then there is another class of losses to which I would like to call your attention, and that is the loss of the big shipper in small amounts but which aggregate a very considerable total. Some of the members of our institute in Chicago have told me that they have, perhaps, against a single line, as many as 50 claims, perhaps no one of them calling for a loss of more than a hundred or two dollars, and it is a question of fighting each claim individually through the courts at an expense beyond what they could hope to recover. So those 50 claims of $100 apiece or $200 apiece, as the case may be, make in the aggregate a very considerable loss for that shipper.

I do not know how familiar your committee is with the hearing which was held here in Washington last November before the Interstate Commerce Commission, Commissioner Woolley, in regard to a uniform bill of lading. I wish that it was not so voluminous so that a very considerable portion of that could be read into your record here, for it sets forth very explicitly and very completely many of the objections of the shippers to the present forms of bills of lading. It was the hope of the shippers that out of that hearing would come a uniform bill of lading for ocean movement of goods that would give them the same definite knowledge of conditions that they have of the inland bill of lading, but nothing has as yet taken place. I understand that the commission have now made up their minds that they do not have the necessary jurisdiction to bring that about. And so may I suggest to your committee that they, or some other Government organization—the Department of Commerce, the Federal Trade Commission, or the Interstate Commerce Commission—be given authority by law to specify a uniform style of bill of lading which will protect the shippers, the shipowners and the underwriters, and is equitable in form.

Perhaps at this point I might call your attention to a few of the clauses that appear in those bills of lading, which are so manifestly unjust to the shippers of perishable products that probably comment is unnecessary. For example, do you know that the shipowners reserve the right to ship live stock on the same decks with shipments of hams, for example, and they relieve themselves of the responsibility of contamination of those shipments of human food from the urine and manure, or from drainage from the stalls, of those live animals? It reads like this in some of the bills of lading, naming over the various things from which they are attempting to exempt themselves: Fluids, decay, hook marks or injury from hooks, stowage or contact with or smell or evaporation from any other goods, or damage from coal or coal dust, or leakage or flow or contact with urine, manure, drainage of any animals carried in said ship, or from their stalls.

Almost equally objectionable, of course, is their practice—I say "practice" because it has come to our attention in more cases than one—of stowing shipments of meats in holds that have been used for

bunkering. If fine coal dust works into the package it destroys the value for human food of shipments of that kind.

Another thing that they attempt to relieve themselves from is the damage to the shipments from heat. It is manifestly impossible to ship these perishable goods if they are stowed near boilers or steam pipes, or anything of that kind that will cause heat. Deterioration is absolutely certain. We pay for the shipment of provisions a rate, double the rate for ordinary stowage, for what is known as 35 to 40 degree space—that is, air-cooled space in the holds of the steamers—with the expectation at least that the temperatures will be carried at 35 to 40 degrees. But when we get our bills of lading we find there is a provision there that they are not responsible for changes in temperature. In other words, they have taken twice as much money from us for the carriage of those goods in a refrigerator chamber and then relieve themselves of the responsibility of even putting them into such a chamber.

Here is another clause that has worked a great hardship—that the carrier shall not be liable for any claim written notice of which is not given before the removal of the goods; acceptance of delivery to be a waiver of all claims of which such notice has not been given. In other words, how can a consignee know whether he has a claim or not until after he has gotten possession of the goods and removed them? And yet here they disclaim any liability unless he files notice in advance of the time when he can possibly know whether he has a claim or not.

Another contention that I met with on one of my last trips across the water was at Antwerp. The shippers there took the stand that if they delivered one hoop or one stave of a package they had then completed delivery of the package.

Mr. LEHLBACH. You mean the shipowners?

Mr. HERRICK. The shipowners; yes.

Mr. LEHLBACH. I understood you to say the shippers.

Mr. HERRICK. Well, the carriers; the shipowner. I said to them each tierce has about a dozen hoops and probably more than that staves; so that all you have to do is to knock down one tierce and deliver a hoop and a stave and call that 9 packages, or 10 packages, and then take for your own use the 10 full packages—because you claim delivery of a complete package when you have delivered one hoop and one stave.

In this hearing last November it was brought out that the limitation of value—that is, the $100 limitation which has been referred to so many times to-day—was entirely inadequate. One witness testified that that limitation was in effect at a time when the ocean rate, say New York to Liverpool, was 10 shillings a net ton. In other words, about 10 cents for 100 pounds as against the present-day rate, even after the decline which has taken place, of 75 cents per 100 pounds. That $100 valuation has brought about a very serious condition, and I may say, too, that this is not the lowest valuation placed by the carriers; for the Farber Line, for example, to Marseille, has fixed a rate of 1 franc per kilo. At the present rate of exchange that is between 3 and 4 cents per pound, while perhaps the average packing-house product would be valued at 20 to 25 cents a pound. Not only do they put in their bills of lading, but they hide behind it in case of loss and refuse to settle on any other basis.

In considering the various clauses that were objectionable and in suggesting a wording for the hoped-for uniform style of lading, that conference last November suggested that the carriers' liability be covered in this section:

The carrier shall not be liable for loss, damage, delay, or default occurring from any other cause whatsoever, except where the negligence of the carrier is the proximate cause of the injury complained of.

And perhaps in that connection I might give you the definition which was used at that hearing of that term "proximate cause."

A proximate cause has been defined as one which in natural sequence, undisturbed by any independent cause, produces the result complained of.

Now, certainly that clause is terse, does not need the construction of many courts and of years of experience to definitely fix the liability of the carrier.

The $100 valuation seems to be a thing that has come down from time immemorial and seems to me a sacred matter with most of these shipowners; because they have refused, in most cases, to modify it. Mr. Burchmore calls my attention, in the testimony that was given last November, the carriers stated that the rate of freight had been fixed on the basis of this $100 valuation per package. But it transpired, in the evidence given, that shippers had endeavored to find out what the rate of freight was on a higher valuation and had been told repeatedly that they had no other tariff. So that they were not able to pay even a higher rate and get a higher valuation in order to protect themselves.

Mr. CAMPBELL. What company was that?

Mr. HERRICK. The International Mercantile Marine.

Mr. HICKOX. Oh, no; you are entirely mistaken about that.

Mr. HERRICK. It can be proved and was proved at the hearing. Now, this feature in regard to boats sailing to other ports than the one for which freight is contracted, as per advertised schedule. Here is the experience of one of the Chicago packers. They refer to the Cunard liner *Vasconia*. [Reading:]

On May 24, 1921, the Cunard liner, *Vasconia*, cleared for us eight cars of provisions from New York to London. When space was contracted for, steamer was supposed to sail direct to London, and it was not until after she had cleared New York that we learned she went to Norfolk to complete loading. Despite the 3-cent rail differential we would not consider shipping perishables to Norfolk during the summer months, yet after paying the higher rail rate to New York this steamer took our eight cars to Norfolk where the vessel was detained several days in completing loading. The *Vasconia* finally arrived at London June 9, our product was unloaded June 17, when 249 boxes were found to be slimy, moldy, and tainted.

I may say these boxes contained 500 pounds each, approximately, in weight.

Mr. LEHLBACH. Of what?

Mr. HERRICK. Packing-house products; probably hams or bacon. [Reading:]

The Cunard people claim their bill of lading gives them privilege of changing steamer's route and will no doubt refuse payment of our claim.

It should be made unlawful for a boat to change its advertised schedule after perishable produce has been loaded aboard, except, of course, in case of dire distress, or to save human life, etc.

As regards the question of pilferage on shipments made to various points, it has come to the attention of the Institute of American Meat Packers that some of these lines apparently are provisioning their mess by simply withholding shipments and paying the $100 valuation, that being only a fraction of what they would be compelled to pay if they bought the goods in the open market. And I have here somewhere an example of that, where a certain Chicago packer shipped some very high-priced sausage, of which nearly 25 per cent was either not delivered at all or they delivered empty cases. It was the steamship *Pesaro* from New York; arrived Genoa, Italy, April 19, 1920. [Reading:]

The attached is a translation of survey made on consignment of 500 cases of sausage shipped from New York to Genoa on S. S. *Pesaro*, March 22, 1920. You will note from the underlined portion, about the middle of the first page, that the damage was due to "pilferage, which may have occurred in the hold of the steamer and partly during the stay of the cases in the lighters." From the last paragraph, on page 2, you will see that the shipowners declined to intervene at the survey, declaring that according to the bills of lading they are not responsible for pilferage nor for weight.

This is in direct opposition to the Harter Act, but it would take an expensive lawsuit to force the steamship company to recognize their responsibility, and even that would not set a precedent for the settlement of future claims.

In cases like this we are practically never able to collect part or all of the loss from the lighter company.

Then follows the translation of this correspondent, with which, perhaps, you are interested, giving the figures, weight, etc.; but it shows the survey that was made there and the resulting loss. There was a shortage of 38 cases out of 497.

The facilities for shipping to Porto Rico have been mentioned. Here is a memorandum in regard to the line serving Porto Rico. [Reading:]

Both the New York & Porto Rico and the Bull Insular Lines, operating from New York to Porto Rico, limit their liability to $100 per package for large and $8 per cubic foot for small packages. We have pilferage claims on almost every trip, and while they are individually small, they are considerable in the aggregate.

These losses of food product occur so regularly that our San Juan office is firmly of the opinion that the steamship people provision their crews' mess table from our shipments, knowing they can settle for same under the limited liability clause in their bills of lading.

Now, here are copies of New York & Porto Rico and Bull Line ladings, which may be of interest to you, and which I will give to you as exhibits, if you please. There are clauses marked that I would like to call your attention to, especially in regard to what I have just said.

(The bills of lading referred to were filed with the committee.)

There is another practice which has recently sprung up, and that is when there is a loss, evidently due to bad weather or to improper stowage, Lloyd's appoints surveyors at the point of destination. Those surveyors are almost invariably either representatives of the steamer lines or of the underwriters. They make a survey and arbitrarily fix the value of the loss, and in some cases it is 60 per cent due to rough weather and 40 per cent to pilferage; in some cases it is 50–50, and in some cases it is 40 per cent bad weather and 60 per cent pilferage. Our contention is that the pilferage occurs as the result of the breaking of these packages, and in every case rough

handling, therefore, increases not only the danger but the actual pilferage which takes place. In other words, a broken case lends itself very easily to pilferage.

Here is a case of goods shipped on the steamship *Chicago*, on which 11 boxes were short delivered and 11 boxes delivered empty, the steamship company expecting to settle, as per bill of lading clause No. 1, at the rate of 10 cents per pound.

Quite recently the French line have issued a new bill of lading which places the limit of their liability at $100 per package. While it is insufficient to protect shippers on packages ranging from 400 to 700 pounds, the ridiculous part of it is it is more than ample on the smaller packages. In that connection, of course, it is evident that the $100 package liability would cover a Rolls-Royce shipped in a box, as they are accustomed to ship them, or would cover a small package such as the packers forward, containing 56 pounds of lard. In other words, they make no distinction as to the size of the package; but claim the $100 liability as a maximum, or the invoice value if it is less. The French Line liability was limited to one franc per pound, which even calling a franc 10 cents, which is above the present exchange market, is entirely inadequate.

In our freight contracts, as I think I said before, we stipulate that these boats are to sail direct to the ports for which they are scheduled, but no attention whatever is paid to that stipulation and they, for their own profit, sail to other parts; and, as additional cargo is offered them, having previously booked with us a certain amount of freight, an initial booking, they get that on board and then proceed to canvass the country over for additional freight and, as an inducement, offer to make the first port of call whatever the other shipper desires.

Here is a case where a shipment of that kind was booked on December 21, 1920, of 1,000 tons of refrigerated space. I wish to call your attention to the fact that refrigerated space usually carries double the rate of ordinary space. The rate in this case would even be higher than that, because this is a temperature of 15° or lower, on the Shipping Board steamer *Guimba*, which was scheduled to sail on or before January 7, 1921, for Hamburg and Rotterdam, 800 tons to go to Hamburg and balance to Rotterdam, Hamburg to be first port of call. [Reading:]

Later, on December 29, the I. F. C. notified our New York office they were having difficulty in getting sufficient cargo to make a full load, although it was originally understood that if they could not get about 1,100 tons from William Davies Co. to Hamburg they would proceed with only our cargo on board. They then asked our permission to accept a consignment of apples for Glasgow, and to make Glasgow the first port of call, steamer to remain in that port only five days, then to proceed to Hamburg, thence to Rotterdam, arrival date at latter port to be about February 5.

On account of delay entailed, rapidly falling market, and the added possibility of damage to our product we could not consent to such an arrangement. To this the I. F. C. responded by asking us for additional tonnage to Hamburg and Rotterdam. To help them out we booked an additional 900,000 pounds ordinary cargo equally divided between Rotterdam and Hamburg. In spite of this and our urgent protests they accepted the 17,000 barrels apples for direct shipment to Glasgow. In meantime all our cargo was enroute to seaboard and a large portion actually loaded aboard steamer. Then to make matters worse, the steamer loaded our Rotterdam cargo so that it should be unloaded before the Hamburg lot, but as product was similar we were able by changing documents to have steamer call Hamburg before going to Rotterdam.

Originally sailing date was to be January 7, or earlier, and although loading completed January 10 the *Guimba* did not sail for Glasgow until noon January 17, account it being found necessary repair machinery after loading was completed. Then account oil in boilers and feed tanks, the *Guimba* had to put in to Halifax January 24 for repairs so that she eventually arrived Glasgow February 15, Hamburg February 24, and Rotterdam February 28—that is in contrast to the contract which provided that they should reach Rotterdam by February 5—or just about one month behind her schedule.

In the meantime the market was dropping rapidly. It is difficult to arrive at exact figures but we estimate a good 5 cents per pound loss on the frozen meats and 1½ cents per pound on the lard, making a total of $125,500.

We certainly feel that steamship companies after making contract should not be allowed to jeopardize the interests of their patrons by waiting around beyond the contracted sailing date for more cargo, or be allowed to subsequently contract for a direct delivery to another port when they had already made contract with some other shipper to sail to a specified port. In the interests of American exporters the Government should take action to regulate this.

I have here a little circular gotten out in the interests of the Eighth National Foreign Trade Convention, in which they say that—

One-fifth of our industrial and agricultural population depend for their livelihood on foreign trade.

The profits of both farms and factories depend for their maintenance upon foreign trade.

Every man, woman, and child in the United States has a vital personal interest in foreign trade.

It therefore seems evident that the committee is on the right track in endeavoring to solve and to relieve the burdens of that foreign trade in so far as possible.

The statement is so frequently made that this is a risk which can be insured; that is, the risk of pilferage and also the risk incident upon the undervaluation of a package. The insurance in the case of pilferage does not fulfill the need of the buyer. He needs the goods; he buys them for a purpose, and in the case of the packing industry it is a food product—it is not a need which can be put off indefinitely—and the failure of such shipments, as the one I have just quoted, to arrive at destination might make a very serious shortage of food at that particular market for the time being. As has been pointed out this afternoon, the actual insuring of such losses does not in any way minimize the economic loss to the country. In fact, if anything, it aggravates it, because there is the overhead of the insurance companies to be added to the amount of the loss; and the mere fact that they pay the dollars does not save this product to the country or to the people—to the shipper or to the consumer.

The question of concealed loss is, of course, and always has been and always will be a difficult one; and when goods arrive on the other side, as I have personally seen them, with the box filled up with sea boots, with blocks of wood, with coal from the bunkers, and articles of that kind, it seems evident, to me at least, that that pilferage did not occur ashore.

I touched briefly a few minutes ago on the increased chance for pilferage through rough handling of the product, of the packages. I would like to go into that a little further and to give you the experience that I had in Rotterdam late in 1919. I was there when a boat was unloading some of the products shipped by my concern. They dropped a net into the hold. That net is 12 to 14 feet square. At each corner of that net is a loop, a wire cable in this case, and that

is spread out on the floor of the hold. There were four truckers. They would come with a box of meat from the four directions so as to put one in on each side of that net and not be in each other's way; and they simply came up to the edge of the net and dumped each box over in the net. The four corners were then gathered up and hooked on to the hoist and as that began to lift these boxes were all thrown together to the center of that net. They contained between 500 and 600 pounds net and would weigh probably 650 to 700 pounds gross of packing-house products—in this case, dried salt meats.

It is impossible in packing those boxes not to have some air space, some interstices, because goods do not pack into boxes like bricks would, or anything like that. There are spaces that are not filled. And as the corner of those boxes would strike either on the top or the side of one of the other boxes, they would break through.

Then the hoist was swung around over the dock, that net was lowered to the dock, two of the corners unhooked and the hoist picked up, and those boxes spilled out onto the floor of the dock. In doing that there was still further breakage; and, naturally, these boxes having all been broken, their contents are spilled out more or less on the quay.

Mr. EDMONDS. Mr. Herrick, where did the responsibility lay as to the handling?

Mr. HERRICK. Nobody seemed to assume the responsibility.

Mr. EDMONDS. Whose duty was it to handle the net; the ship's?

Mr. HERRICK. That was ship's tackle.

Mr. EDMONDS. And the emptying of the net was ship's also?

Mr. HERRICK. Was also ship's tackle. There is in all of these shipments, as in every case, a sort of "no man's land" where nobody is willing to admit liability. In that case I protested to the steamship agents and they said, "Well, as soon as goods leave ship's tackle our delivery has been made." I said, "Yes; but you are destroying these packages and you are spilling this stuff out and it gets all full of dirt, to say nothing of any other loss." They said, "Well, that is because the packages are not strong enough."

Well, I submit to you gentlemen it would be impossible to build a package strong enough to stand that kind of handling. It can not be done. So far as the packing industry is concerned they have, all through the war and still do, strive in every way to increase the strength of their packages. They are using better materials; they are paying more per container for this export stuff than they ever did before, except perhaps during the peak of the war, and still we are accused of not packing these goods sufficiently well to stand the handling. It seems to me it is purely a question of carelessness on the part of the carrier, both inland and ocean. The inland carrier is not any too careful in removing those goods from the cars to the lighter; and then, if they are handled in a net, as in this case, it is small wonder that such a percentage of the boxes arrive on the other side broken.

There was a further interesting fact in connection with that particular shipment, and that was I noticed the men working on the docks of this warehouse had left their coats about on the piles of goods there at convenient places, and as I stood there I saw, time and

time again, a man slip away to his coat. Now, whether that coat contained a ham or a shoulder or a side of bacon when he got ready to go home, it seemed to be a matter of entire indifference to everybody concerned. It was not to me, because I knew that eventually I should have that claim to pay to the customer who received short weight on this shipment and a short number of pieces, even though he received, perhaps, a full number of boxes.

In building this export bill of lading, if it may happen that we are at least to get a uniform style, which I very much hope we shall, it seems that there should be no hiatus at any point in that bill of lading where the responsibility of the carriers, either inland or ocean, did not cover. It is manifestly impossible for the inland shipper to follow those goods through and to take charge of them at every point along the route, wherever it may be, to protect them. The only persons that can do that are the carriers. As I said before, there seems to be a "no man's land" there that we are not able to cover at the present time. The inland carrier says, "I hold a clean receipt from the shipper for the goods." The ships say, "As soon as they leave our tackle and are dropped onto the dock our liability ceases," and, as I have read to you, they disclaim any responsibility for claims that are not filed in writing before the removal of the goods—a thing of physical impossibility. It seems to me, too, that the period of filing claims against the ocean carrier is altogether too short. That six months is so easily absorbed by them in correspondence back and forth, or by the consignor himself endeavoring to find out just where the fault lies. It has been pointed out here, too, that the only people who have knowledge of the facts are the people on whom the claim would eventually land, and, therefore, they are not at all willing to give any information. And it seems to me we should have the privilege of filing suits at least six months after they have been declined by the ocean carrier, instead of six months after the delivery of the goods.

Mention has been made here to-day, also, of the clubs who insure the shipowner or operator, and in that connection I presume Mr. Loines will be glad to give you a résumé of his testimony at that hearing last November. But, at any rate, it brought out the fact that the losses paid by those clubs ran from 60 to 75 cents per gross ton per annum. By gross ton we understand that probably one-third more could be loaded of cargo, so that charge is purely nominal and, of course, is so much less than the shipper can secure from any underwriter. It is my understanding that that covers the claims that the steamship people have not been able to absolve themselves from in these various clauses in their bills of lading—in other words the $100, as has been said here to-day—and if they are thus able to secure immunity from all the claims they have not absolved themselves from, for from 60 to 75 cents per gross ton per year, they certainly are not standing any considerable portion of the losses suffered by the shippers.

If I might be allowed to suggest to your committee——

Mr. EDMONDS. Is that 60 to 75 cents, Mr. Herrick, on the freight or on the package of the shipper?

Mr. HERRICK. On the package of the shipper—not per trip, but per annum. And, of course, to the Far East, I suppose the boat

might make two or three trips a year, and to Great Britain, for example, 10 or 12, and to Cuba a correspondingly larger number. So that it is purely a nominal burden they are now bearing, although they talked a good deal about it.

If I may be allowed to suggest, it seems to me there should be some provision somewhere, by law, that the freight contract shall govern the terms of the bill of lading, and not be governed by a bill of lading issued subsequent to the receiving of the goods on board of the ocean carrier. It is then too late for the shipper to withdraw them. He does not know in advance what those terms will be; he can not protect himself from them and, in many cases, even though he had a copy of the printed form of the bill of lading, there are numerous rubber stamps affixed at the last moment, with still further exemptions; and I have in mind one bill of lading which carried several such rubber stamps.

Mr. EDMONDS. Is there not a joint bill of lading issued now?

Mr. HERRICK. A through bill issued by the inland carrier, the railroad? Why, we will say, for example, from Chicago to Liverpool, the inland carrier issues a through bill of lading; but in that bill of lading is a clause "that this bill of lading is subject to and modified by all the terms of the bill of lading in use by the steamship people at the time the goods are actually on board the steamer."

Mr. EDMONDS. The shipper never really knows what the terms are, then?

Mr. HERRICK. I have applied for copies of those bills of lading to be attached to my freight contract and have been refused. And on inquiring why, they said, "Why, we can not tell what form of bill of lading will be in use at the time your goods get to seaboard." It only illustrates the absolute inability, under present conditions, for the shipper to find out what sort of death warrant he has accepted.

Mr. EDMONDS. These attorneys down at the seaboard must have some business, you know. [Laughter.]

Mr. HERRICK. Well, they have altogether too much.

Mr. CAMPBELL. He has certainly stated a good case for a lawyer there, on delivery.

Mr. HERRICK. So I may say the freight contract should be the governing feature in the terms of the bill of lading.

Also, it was proposed at that hearing last fall that the ocean carrier be compelled to file a copy of the ocean lading which he proposed to use, either with the Interstate Commerce Commission or some other governmental agency, and that he should not be allowed to change that form except upon a stated notice, possibly 30 days. And in changing that, it should be understood that all outstanding contracts for freight, previously booked, should be governed by the bill of lading that was on file with the governmental agency at the time of the booking of the freight. It is customary, especially in our line of business, to book that freight for a considerable time ahead. We have to do it to reserve space, more especially where it is what we call refrigerator space; that is, 35 to 40 degrees, or freezer space, 15 degrees or under. A great many of those boats are in the habit of booking their space, practically for the entire summer season, in advance. Now, then, we should know what sort of a bill of lading is to govern the movement of those goods and it should be attached to or made a part of this freight contract.

Then there was another proposition made, that, in addition to thus filing these bills of lading with the line, it would be of great advantage to the inland shipper if, at the various centers like Chicago, St. Louis, Kansas City, Omaha, etc., there were branch offices of the Department of Commerce and a file of these bills of lading should be kept in those branch offices, so that it would not be necessary for the shipper to come to Washington, for example, to find out what sort of a contract he had accepted. This is only one of the various schemes that were proposed there to expedite the handling of export business, not only on the part of the people who have been in the business for a number of years and who, therefore, have a considerable knowledge of all that it entails, but more particularly on behalf of the beginner who has very little knowledge about these things and perhaps whose first experience might be disastrous.

In these various forms of bills of lading—it would only take your time to read them—there are so many exemptions that I doubt if anybody in the room can think of one single contingency in the course of the transportation that the ocean carrier has not relieved himself from, or declared his lack of liability for.

Mr. EDMONDS. He takes the effort to collect the freight, does he not?

Mr. HERRICK. He is absolutely ready and willing to accept that; yes. [Laughter.] For example, he goes on to recite that he shall not be liable for the following perils, causes, or things, namely:

The act of God, enemies, pirates, robbers, theft, or pilferage by land or sea and whether by persons in the service of the companies or not, vermin, barratry, capture, seizure, embargo, adverse claims, restraints of princes, rulers, or people; strikes, lockouts, labor disturbances, trade disputes, whether partial or general, or anything done in furtherance thereof, whether carriers be parties thereto or not, the action of mobs, effects of climate, heat of holds, steam, smoke, sweating, insufficiency of packages in size, strength, or otherwise; bursting of packages or consequences arising therefrom, breakage, leakage, pilferage, chafage, wastage, rain, spray, rust, oil, frost, thaw, floods, decay, hook marks or injury from hooks, stowage or contact with, or smell or evaporation from any other goods, or damage from coal or coal dust, leakage or flow of, or contact with, urine, manure, drainage of any animal carried in the said ship, or from their stalls, inaccuracies, insufficiency, or absence of marks, numbers, or addresses, or description of goods shipped, or misdelivery or loss arising therefrom, differences between the marks, or the contents of the packages and the description thereof in this bill of lading (the alleged marks, numbers, or description in the margin, notwithstanding), injury to or spoiling of apples or packages, loss of weight, detention, delay, literage to or from the vessel, transshipment, landing, jettison, explosion, heat, fire on board or on shore, at any time or in any place, nor for incorrect delivery, overcarriage, perils or accidents of the seas, rivers, and navigation, accident to or defects in boilers, machinery, or appurtenances, refrigerating engine or chamber, or any part thereof, or in pumps or pipes of any kind, collision, stranding, heeling over, upsetting, submerging, or sinking of ship in harbor, river, or at sea, admission of water into the vessel by any cause, and

whether for the purpose of extinguishing fire or for any other purpose, unseaworthiness or unfitness, at or after the commencement of the voyage, or any act or omission, negligence, default, or error in the judgment of the pilot, master, mariners, engineers, stevedores, workmen, or other persons in the service of the carriers, whether on board the said ship, or any other ship belonging to, or chartered by them, or in craft or ashore, for whose acts they would otherwise be liable, or otherwise howsoever, including mistakes, and interpretation of, or in exercising or failing to exercise, powers of discretion given under this bill of lading.

Now, if there is anything omitted there, I should be very pleased to know what it is.

Mr. EDMONDS. Have they breakage of tackle in there?

Mr. HERRICK. Well, there is "errors of judgment." [Laughter.] If they make a mistake and throw the goods overboard instead of lowering them into the hold of the ship, they are absolutely exempt. Then it goes on. Part of it I have read to you before, that the carriers shall not be liable for any claim, written notice of which is not given before acceptance of the goods.

Mr. EDMONDS. Is that the customary bill of lading?

Mr. HERRICK. Well, this was taken from the Norwegian line bill of lading. They are not very much different, though. These gentlemen are content to have a little fun with the Norwegian line, but I think they might read their own form and find a great deal of this right there. [Laughter.] Then it goes on—

The carriers shall not be liable for loss of market, and all claims to be adjusted on the basis of the invoice or declared value of the goods, whichever shall be the least. Goods of an inflammable, explosive, or otherwise dangerous character, shipped without permission and without full disclosure of their nature, may be seized and confiscated or destroyed by the carrier, at any time before delivery, without any compensation to the shipper or consignee. Any loss, penalty, or damage to the ship or other cargo, direct or consequential, or any responsibility whatsoever, shall be recoverable from the shippers, consignees, or owners of the goods. The vessel is not responsible for statements of condition, quantity, marks, weight, measure, gauge, quality, brand, contents, and value of the goods. In no case shall the carriers be held liable for any inaccuracies or absence of marks upon the whole or any number of hides, or other goods, nor for the number of horns or bones (if any) shipped under this bill of lading.

Should it be found on cargo being discharged that goods have been landed without marks or having marks different from those on the bill of lading, the same shall be apportioned by the master, porter, or receiver of cargo, to the different lots, and consignees shall conform to such allotment. Where bulk goods or goods without marks, or with the same marks are shipped to more than one consignee, the consignees shall jointly and severally bear any expense and loss in dividing the parcel into pro rata quantities, and any deficit shall fall upon them in such proportion as the carriers may decide.

That the goods are to be stowed under the main deck, or under the spar, shelter, or bridge deck, or poop, or in deck house, or in peak at masters' option and shippers' risk. [Laughter.]

I want to call your attention that they take shipments of our food products, products for human consumption, and reserve the right to

ship those anywhere on deck or under deck, or under spar deck, or under shelter deck, or on bridge, or in poop, or in deck house, or in the peak, at master's option and at shipper's risk.

The consignee shall take delivery of the goods as fast as the steamer can deliver immediately the ship is ready to discharge them, failing which demurrage shall be paid at the rate of 6 pence per net register ton per day of each merchant in default and, at the master's option, the goods to be discharged from the ship as soon as she is ready to unload at the wharf or into hulk, lazarette, or hired lighters if necessary, by day or night, and at the risk and expense of the owners of the goods, without the consent of the receivers of the cargo, and any expenses, deterioration, loss of goods or packages, to be borne by them. The cubage of all measurement goods shall be affected by the parties appointed by the carriers, cost of same being borne by the consignees of the cargo as customary. The porterage of the delivery of the cargo, whether by day or by night, shall be done by the consignees of the ship at the expense and risk of the owners of the goods. The collector of the port is authorized to grant an order for the discharge of cargo immediately after the arrival of the steamer, and should the master or agents require discharge to be made beyond the usual customhouse hours, consignees of cargo shall be bound to sign immediately an application for this purpose.

If prevented from discharging by strikes or force majeura, the goods may be taken on to the next convenient port for transshipment to their destination, or may be retained on board till the ship returns.

They have now devised a rubber stamp to the effect that in case the goods are brought back to the United States, the shipper shall pay the return freight. I have in mind a case where a Norwegian boat, carrying goods to Christiania, arrived there and found the harbor congested, found it would cause a few days' delay to wait to unload at the usual berthing place of the steamer, and so sailed out to an island in the harbor there and discharged the goods on that island. The Chicago packers learned about it three or four months later; they claimed it took all that time to find out where they were, and the carrier claimed they were not bound even to give notice as to what they had done with the shipment.

There is another matter which seemed important to us last fall, and which was covered, that where delivery was made in consequence of quarantine or strikes or riots, or anything of that sort, short of anything named in the bill of lading, that it should be the burden of the ocean carrier to give notice to the shipper or consignee of the fact where they were delivered. There are cases that could be cited, numberless cases, where packing-house products, perishable in nature, have been thus discharged into open lighters, or into an open roadstead or harbor, simply to save a little time to the boat so that they might thus quicker effect her discharge and sail away. That is absolutely a confiscation of the goods, so far as any value of them is concerned, because in the open lighters one day, especially at this time of the year and with this kind of weather, would cause nearly total loss.

The changes suggested in the bill of lading were very bitterly objected to by the shipowners on the basis that this is an old institution; that many of these laws have been construed by the court and, therefore, the thing was sacred, and we should not change it or touch

it at all. But they are so manifestly unfair in many cases they are so difficult for the ordinary lay exporter, and, perhaps, even an attorney to propertly interpret that it seems as if it was time to cut away from these old phrases that contain words, the use of which has changed in the years, until now, perhaps, the very opposite is understood from what the courts have construed those clauses to mean. The handling of perishable freight, of course, is somewhat different from the handling of dead freight in that it can not be discharged into any kind of lighter that happens to be at hand, nor on to an open dock, or, as in the case of the Norwegian ship referred to, on an island without protection, and in that connection it might be well to keep in mind the fact that shipments of that kind of freight pay a very much higher rate than the shipments of dead freight—nonperishable goods; therefore they are entitled to receive more care and more consideration.

The question of insurance, it seems to me, is so closely connected with that of the bill of lading that it is absolutely impossible to draw any dividing line between them; because on the wording of that bill of lading depends absolutely the cost of your insurance. It is now practically impossible to get pilferage insurance to some parts of the world. The experience of the underwriters has been so unfavorable that they decline to accept this or that kind. Then there is another important feature that perhaps was not brought out to-day, and that is in a great many cases there are goods which the shipper or consignor in this country is shipping to his own branch house on the other side.

Now, if the impression prevails that those losses fall on the foreigner and therefore that the United States citizen is not concerned with them, that is absolutely erroneous from two standpoints. In the first place it kills the trade, the foreign trade, of the American exporter (it results in the loss of his customers and possibly the loss of the market entirely), and, in the second place, in a great many cases the United States consignor is also the consignee. He is shipping to himself over there, the goods to be sold on their arrival there, so that in any case that loss falls inevitably on the United States citizen, and, therefore, he is the one who should be given the necessary protection and through not only an improved form of bill of lading, a more equitable form, but also, as I have stated, before, through the recognition of the freight contract as a part and as a vital part of the bill of lading itself.

Mr. EDMONDS. Who was it that contended in the hearings that that was a "safe" bill of lading?

Mr. HERRICK. Who was it?

Mr. EDMONDS. You said it was contended that this bill of lading was "safe." Who contended it was "safe"?

Mr. HERRICK. "Sacred," that you must not change a word or a punctuation mark in it, because it has stood the test of hundreds of years of litigation.

Mr. EDMONDS. Who contended that?

Mr. HERRICK. The shipowners. Now, of course, there is another feature that perhaps I should not mention outside of the family, and that is that there are large packers and there are small packers. Small packers find themselves sufficiently handicapped in competing with the larger concerns in this export business without having this added burden put upon them in the way of an inadequate bill

of lading—inadequate protection through the bill of lading. I assume that it is of vital interest to the agricultural community the country over to see these small packers exist, and that any blow at them, therefore, would be a direct blow at the producer of this live stock, and that he is entitled and he is interested in this bill of lading just as much as though he was the actual exporter because the difficulties of the exporter are really reflected to him in the market for his stock.

The Harter Act is or was a tremendous help to the exporter. I would like to make a suggestion to the committee that that Harter Act be given new life at any point where it may be weak at present. Beyond that I would like to see enacted into law a provision that no boat, regardless of what flag she flies, should be given her clearance papers unless she first files, with whatever governmental agency may be named, the bills of lading under which she proposes to carry the goods of the American shipper.

Second, that they file with the collector of the port a schedule of the rates which they received on these various shipments. For example, it is not many years ago that one certain line said to the small packers, your rate from New York to such a point will be so much; if the time comes that you ship more than 5,000 tons in any single month your rate will then be 2 cents less.

Their attention was called to the fact that the small shipper was doing his utmost to compete with the big shipper without the added handicap of this differential in freight, and the question was asked, how did they ever expect the small packer to get to the point of shipping 5,000 tons to that port in a single month with the handicap at that time that existed of nearly 10 cents in the rate as between the small and large shippers. There was no camouflage about that. It was frankly stated by the agents of the company that they were making the big companies a rate practically 10 cents less than they were asking the small packer. Therefore, I think that the owners or agents of these vessels should file with the collector of the port a schedule of the rates they received on the cargo. That, of course, would be after the shipment sailed, but it would enable the shippers to know whether they were being undersold by the difference in freight rate made to their competitors, especially if their competitors were larger shippers; and certainly the provision that they be denied clearance papers unless they agree to file a copy of their bill of lading would be no hardship upon them, and the shipper would thereby be able to know something about the kind of contract he is expected to make, which he does not know now, in many cases, until his goods are being brought across.

I came here poorly prepared. I must apologize to the committee and to you gentlemen for rambling through this thing as I have, because they called me from my summer home, and I had no opportunity to get this thing into shape as I would like to do and follow it logically through. There may be some points that I have not touched upon that I may have the privilege of reading into the record to-morrow, if that is agreeable. I will be glad to answer any questions, if there are any.

Mr. LEHLBACH. You have enumerated the various export interests for whom you are speaking here. Can you give us an idea as

to what percentage of the entire export trade of this country you are speaking for?

Mr. HERRICK. I am afraid I can not. Of course, the packing industry is perhaps as large a shipper of export goods in ordinary times as any other single industry, and in the Institute of American Meat Packers, as members, are every export packer that is in the country. The Illinois Manufacturers' Association also represents a very large exporting interest, but I have not any figures.

Mr. LEHLBACH. Can you give us any figures as to the amount of losses sustained by any interest, of which you have knowledge, through theft, pilferage, or nondelivery in exporting goods?

Mr. HERRICK. As to tonnage for a year, do you mean, or port percentages?

Mr. LEHLBACH. Yes; both ways. I would like to get both.

Mr. HERRICK. That, I am afraid, I can not give you. I came here right from my country home, and did not have the opportunity to get these figures together.

Mr. LEHLBACH. Can you tell us whether losses from these causes and nondelivery to consignees, or delivery in a deteriorated condition, has caused loss of customers and possibly loss of markets to American exporters?

Mr. HERRICK. It has.

Mr. LEHLBACH. Can you specify?

Mr. HERRICK. I lost a customer in Norway, in Christiania, that I have never been able to get back. I have not been able to convince him that the nondelivery of those packages was through no fault of the shippers; that the goods were in a good condition when delivered to the carrier, and that it was a matter entirely beyond our control. That is just one specific case. I have no doubt there are a great many others. A great many of those losses—I might say, we draw on the customer with documents attached and it is really his fight then with the carrier to collect the losses, but even though it is according to the terms of the contract it reflects right back to the shipper and it usually results in the shipper assuming the loss or endeavoring to collect it himself, and reimbursing his customer in order to hold him.

Mr. LEHLBACH. Do you find that competitors in foreign markets, from other countries, are subjected to the same degree of loss and to annoyance and loss of freight, through failure to deliver, as American shippers?

Mr. HERRICK. I do not think they are to the same degree. They have some trouble, but not to the same extent that we do.

Mr. LEHLBACH. Do you think if means can be devised to correct this source of loss and failure to meet your customers' wishes or the customers' wishes, that the nation that first effects such a remedy will have the edge on the competitors of other nations?

Mr. HERRICK. Absolutely.

Mr. LEHLBACH. To what degree have your insurance premiums that you have had to pay on losses of this kind, theft, pilferage, and nondelivery, increased in recent years?

Mr. HERRICK. Tremendously; and in some cases we are absolutely unable now to get coverage. That is, it would be at such a prohibitive rate that it could not be considered.

Mr. LEHLBACH. What is the process with regard to filing notice when bill of lading demands that such notice be filed before the goods are removed from the custody?

Mr. HERRICK. As I attempted to point out, the receiver of the goods has no knowledge that there is a claim, except in case of short delivery. He has no knowledge that there is a claim until he gets possession of the goods; therefore, he can not file his notice before the removal of the goods. It is only after they have been removed that he gets possession of them that he knows the true condition.

Mr. LEHLBACH. Could shippers protect themselves with regard to that particular limitation by in every instance filing notice of possible loss for every possible cause on every shipment they make and then on examination of the shipment release those that he finds to be in good condition?

Mr. HERRICK. I have advised some of our shippers to do that, but they seem loathe to do it because in case they do it they would get practically no attention at all when there is a claim.

Mr. LEHLBACH. It is the cry of "wolf."

Mr. HERRICK. It is the cry of "wolf" and they would give no attention when there is actual loss.

Mr. EDMONDS. I would call your attention to section 17 of the original Shipping Board act. The second section says that every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivery of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Have you ever tried to get the Shipping Board to correct any of these things?

Mr. HERRICK. Not to my knowledge.

Mr. EDMONDS. It seems to me that section—I was in the committee when this was framed—was intended to cover just what you have here. Here is a practice that is gradually growing worse and it should be corrected. Full authority is evidently given to the Shipping Board, under that section 17 particularly, to order any common carrier by water, in foreign commerce, as the section is headed, to correct any condition of this kind.

Mr. HERRICK. We were so hopeful that that hearing last fall would result faborably; that is, bring in an amended form of bill of lading that would protect us.

Mr. EDMONDS. I have been informed that under the new board there has been some action taken in the matter of starting it.

Mr. HERRICK. We very much hope so.

Mr. EDMONDS. Still at the same time if the complaints were brought before the board under that act they would be bound to investigate them and give some judgment on the matter.

Mr. HERRICK. The great handicap of the Shipping Board, especially with the shippers of perishable products, is the fact that they have no facilities for docking their boats and unloading their cargo.

Mr. EDMONDS. You are getting the Shipping Board into the position of a ship operator. I am talking about the original powers given to the board. We do not look upon the Shipping Board as an

operating body. We never intended it as an operating company. It was started as a regulatory or supervisory body and if we had our way it would never have gotten into operating ships. If they were not operating ships they would be a body like the Interstate Commerce Commission, a supervisory regulatory body, and they would be doing the kind of work that that body is doing. Unfortunately, they have gotten into the business of operating ships. They never were intended to be ship operators, and we hope to goodness they will not be ship operators very long. Those regulatory provisions were put in there so as to give them some authority, the same as the Interstate Commerce Commission, to correct these inequalities, when they existed, if they were harmful to the trade.

Mr. HERRICK. I was saying that more, perhaps, in defense of our loyalty to our own flag than anything else. The shipping people have been accused of not supporting the Shipping Board, and on behalf of the shippers I want to say right here that is very largely in the case of perishable freight, because of the fact that those operators, whoever they may be, have no adequate facilities abroad for the discharge of that cargo when the boat gets there. Two years ago I went abroad and found a Shipping Board boat carrying cargo that we had shipped in June from the packing house. I arrived there on the 6th of August and they were laying in the Mersey and not discharged then.

Mr. EDMONDS. We have very expensive agents on the other side who were supposed to see that these cargoes were unloaded promptly. It costs us a million and a half dollars a year to keep men over there trying to get cargoes unloaded.

Mr. HERRICK. Every dock is taken up by the regular occupant there, and when any outsider—the Shipping Board or anybody else—tries to get space to discharge their boats, especially if he is in competition with the owner of that dock, he has difficulty.

Mr. EDMONDS. Probably it would be just as well if we withdrew our men and let the captain take care of it.

Mr. HERRICK. That would be like shipping inland over the Pennsylvania Railroad to Chicago if they had no terminals at Chicago. They might get there over the rails, they might ride to Chicago, but when they got there there would be no facilities and no way to discharge the cargo. I found on the other side, not only in Great Britain but on the Continent as well, that those docks are pretty much controlled by the regular lines under foreign flags.

Mr. EDMONDS. What did you find our port stewards and port captains and port supply agents were doing over there?

Mr. HERRICK. I do not think I found them at all. I found the boats lying there full of cargo. Imagine cured hams, for example, not smoked but simply cured, shipped from the packing house in June and lying in the Mersey River on the 6th of August, under the walls of the dock, in just such weather as we are having here now, and imagine what they looked like; and some of these hams did not come out of the boat until the 9th of September.

Mr. CAMPBELL. Did you place that case of delay in the hands of a competent admiralty lawyer?

Mr. HERRICK. In that particular case we did not do anything about it, because the British Government, as you perhaps know, assumed the control of all meats coming into the Kingdom on the 9th of

August, 1919: their food administration seized all the goods then in the country and in the warehouses, or wherever they were, on docks, or in ships, and also seized all the goods as fast as they landed. That rather put a different aspect on things so far as the shipper was concerned, because he felt then and still feels that the British Government should pay him for those goods.

Mr. CAMPBELL. That is as far as the shipowner was concerned?

Mr. HERRICK. Yes.

Mr. CAMPBELL. That alters the case entirely.

Mr. HERRICK. I might say in passing that all those goods were seized on the 9th of August, 1919, and many packers have not yet received one dollar for those goods. That is a thing that has been brought to the attention of the State Department, entirely aside from this investigation.

Mr. LEHLBACK. It has been suggested that it is very poor policy by legislation to limit the right to contract freely by the shipper and shipowner, as is the case with other business and commercial interests. I believe you have testified not only that you had no opportunity to negotiate a contract, but that you were not even permitted to know what the contract was until after it has been amended by another one. Is that a fact?

Mr. HERRICK. That is true; yes.

Mr. CAMPBELL. May I ask one or two questions?

Mr. LEHLBACH. With his consent.

Mr. HERRICK. Let me hear them.

Mr. CAMPBELL. Do you sell on c. i. f. terms, as a rule?

Mr. HERRICK. As a rule we sell on paid basis.

Mr. LEHLBACH. Do you represent Armour, Swift, and all the large packing houses, as well as the small ones in your association?

Mr. HERRICK. Yes. Freights are made and paid straight. I do not think that a large majority of sales are made on goods arriving and landed.

Mr. CAMPBELL. Can you do away with the need of an insurance policy on your cargo?

Mr. HERRICK. An insurance policy of what kind?

Mr. CAMPBELL. Marine-insurance policy?

Mr. HERRICK. No.

Mr. CAMPBELL. Do you require them to carry on your transactions with the banks that finance those matters?

Mr. HERRICK. We require them for our own protection.

Mr. CAMPBELL. Do you require them also for your financing arrangements with the banks?

Mr. HERRICK. It might be in some cases. In other cases not.

Mr. CAMPBELL. On all c. i. f. fares they are required?

Mr. HERRICK. According to our contract with the buyer, yes; that is what the "I" stands for.

Mr. CAMPBELL. Do you find this in your business: That the insurance policy is essential to the conduct of the business?

Mr. HERRICK. Marine insurance?

Mr. CAMPBELL. Yes.

Mr. HERRICK. Yes, sir.

Mr. CAMPBELL. Are your companies prepared to pay an increase of freight rates for this; that is, the liability that you want to impose on the shipowners?

Mr. HERRICK. That is a large question. We are already paying five times what we did in prewar days. I do not know whether we are prepared to stand another increase on top of that or not. It must be remembered that we have got to compete with the other nations. If for any reason it is true, aggregations of figures would show it, that we compete with the nations on business in insurance, freight, and cost of hogs, for example.

Mr. CAMPBELL. Can you say whether you are prepared to shoulder an increase of freight rates sufficient to absorb the premium?

Mr. HERRICK. I can not answer that until I know what "sufficient" means.

Mr. CAMPBELL. That is mere quibble, if I may say it, on your part.

Mr. HERRICK. All right. Then, perhaps, we had better stop the cross-examination, if you feel that way about it.

Mr. LEHLBACH. That ends it.

STATEMENT OF MR. F. T. BENTLEY.

Mr. BENTLEY. I am traffic manager in my private capacity, of the Illinois Steel Co., and the Universal Portland Cement Co. In the public capacity I am chairman of the bill of lading committee of the National Industrial Traffic League. I am a member of the traffic committee of the Illinois Manufacturers' Association and of the Illinois District Traffic Association.

Mr. LEHLBACH. Can you tell us the percentage of American exports that you represent through these various interests?

Mr. BENTLEY. Well, representing the individual companies of the United States Steel Corporation before the war, we were exporting about 2,500,000 tons of steel products per annum. During the war that amount increased very heavily. At the present time it has very much decreased with the decrease of business. I do not know what the total exports of the company are but I represent quite a considerable tonnage. I am here in rather a dual capacity. I may say that I have been in the transportation business for 35 years. At one time I was manager of a line of steamers on the Great Lakes and have been an officer of two transportation companies on the Great Lakes. I have been in the exporting business all over the world. At the present time our business is handled by another subsidiary transportation corporation, and I am not in close touch with the details of their business, although they tell me, owing to the style and class of business we handle—they have heavy and cheap products—that they have very few claims and very little trouble. Speaking in a private capacity I have no criticism to offer of present conditions on account of that class of business which we produce and ship.

As chairman of the bill of lading committee of the National Industrial Traffic League, I can talk for the league to a certain extent, but when it comes to this present proposition, the committee has not taken any action and I can only express my personal opinion there.

I may say that I am the only man in active industrial life who has sat around and helped to formulate the railroad bills of lading in this country from the inception of the first bill of lading. Prior to 1903, there was no such thing as a uniform railroad bill of lad-

ing. Practically every railroad had its own bill of lading, its own terms and conditions in them, and generally elaborated them from time to time by inserting some additional clause in the bill of lading to cure some bad losses incurred by the carrier. The situation got so exceptionally aggravating in 1903 that there were two committees organized by the shippers and railroads to see if we could agree on a uniform bill of lading, and I have sat at every conference on the railroad bills of lading from that day to this, and I think, on that account, they made me chairman of the bill of lading committee of the traffic league.

Of that organization I had better state that it is the largest commerical organization of individual shippers in the United States. Here is the roster of the organization that I can file with you to show who are members of it. It probably embraces between 400,000 and 500,000 shippers, having a membership of 1,040 of the principal commercial organizations and individual large shippers in the United States. It has such concerns as the Boston Chamber of Commerce, the Merchants' Bureau of New York, the Association of Commerce of Chicago, and so on (they are all members of that organization), so that we have and represent a considerable percentage of the United States through it in the manufacturing and shipping business.

I have had in the last few years a great many complaints and a great deal of correspondence from members of our organization over difficulties on various phases of the bills of lading, both domestic and export. It culminated some time ago in a case before the United States Interstate Commerce Commission, docket 4844. After the Jones law had passed the Interstate Commerce Commission undertook to promulgate both domestic and export bills of lading. They had hearings, and the matter was gone through pretty thoroughly, and they got out a form of domestic bill of lading. It was fought in the courts by injunction and held up and went to the Supreme Court. In the meantime the Jones law came in and the Supreme Court held that the case was a moot one and left the issue, as to whether or not the Interstate Commerce Commission had authority over an approved bill of lading, undecided.

The commission held further hearings on that, and it culminated in a series of conferences between the shippers, steamship people, and railroads, and in the final hearings before the commission last November, to which I have referred. That matter is now in the hands of Commissioner Hall, who has been working on it since that time, and we have had notice that we might expect such a bill; but it has not yet come out. I now understand they have some doubts as to their authority and are probably waiting for the action of this committee before carrying that matter to a conclusion.

At that time the National Industrial League, after a series of conferences with the steamship people, formulated a through export bill of lading which we presented fully at the hearing before the Interstate Commerce Commission. I can say for the shippers in general that what the shipping public want and need is a genuine through export bill of lading, rail and ocean from the interior of the country to points abroad, as well as a port bill of lading from the seaboard over to foreign countries. We have a document that they call a through bill of lading, but up to this time we have not

needed it. I am informed that it is not a through bill of lading, but two separate contracts put together for convenience and does not really cover the contract as it should. It is decidedly unsatisfactory to the public to find that when they start their shipments from St. Louis, or St. Paul, or Chicago, or somewhere, to London that a question comes up as to the liability of through carriage. We have not a through bill of lading. We are in hopes that we can get a document that will be clean and fair and enable a man in the interior of this country to do proper business without having any kind of question as to losses raised.

The suggestion has been made in the hearings that the small shippers of the country require such a document very much more than the large ones. The large shippers have their own people at the ports, and many of them, ourselves included, take the port bill of lading rather than take the inland bill of lading. We use the other bill on the Pacific coast and some on the Gulf, but not at all on the Atlantic. The small shipper, however, who has not those facilities, must depend on the steamship agency or the originating carrier in his home district to get him all this information and book him and issue him a bill of lading and take care of him generally.

It is not working satisfactorily, and it does not seem to me that there is a great deal of change necessary in the basic law to produce a good bill of lading. We have held in this through bill of lading which we submitted to the Interstate Commerce Commission, for instance, that the contract of coverage should be through, but that the liabilities of the inland carrier and the ocean carrier need not necessarily be the same, but that each one should have its own limitations defined, and then when the bill of lading is signed it would be a document which will carry through to the destination a fair knowledge of what the liabilities are, what the charges will be, and that we will have protection for the full delivery of the property that is shipped.

Mr. HERRICK. Without a hiatus?

Mr. BENTLEY. That should follow. The interstate commerce law prescribes certain liabilities of common carriers, and those liabilities under the Interstate Commerce Act will carry to the port generally to the ship's side. If not, they should, and the inland carrier's liability should extend to the ship's side at the port. In other words, on a through consignment from Chicago to Liverpool there should be a contract to the port of New York or wherever the transshipping port may be. The inland carriers would have full liability up to the time it is put alongside of the steamer in its own lighters, and from that time on it would be subject to the ocean carrier having its liability to the final destination. Of course, there is a different form where a man is shipping from a local port and using his own lighter and assumes his own risk until he gets alongside of the ship, or wherever the ship takes the goods. But on the through bill of lading there should be no hiatus; there should be a contract document that will cover through without any trouble unless the shipper places his hands on it and in some way interferes with the contract of carriage.

Mr. LEHLBACH. Let me ask you a question at this point, if I may? Do you believe a Government may lawfully, either by legislation or by delegating that power to an administrative agency, prescribe a contract of that sort and forbid the entering into of any other contract not the same in every detail as the one prescribed?

Mr. BENTLEY. I think you can, because you can shut out any foreign flag from this country by your port regulations if you want to.

Mr. LEHLBACH. I mean can you impose such a contract in which every detail has been worked out and make it the sole contract that our shippers only may enter into?

Mr. BENTLEY. I think you can.

Mr. LEHLBACH. The Harter Act simply prohibits the divesting of liability which policy prescribes for the common carrier. It simply says they can not divest themselves, but leaves them free, within that limit, to make their own contracts. I was just wondering whether you think the Government could impose a contract worked out in every detail and prohibit the entering into of any other contract?

Mr. EDMONDS. Is not that exactly what has been done already?

Mr. BENTLEY. Yes.

Mr. EDMONDS. That is, by law?

Mr. BENTLEY. Yes.

Mr. EDMONDS. It is what the Interstate Commerce Commission has governmental authority by law to do.

Mr. BENTLEY. The Interstate Commerce Commission has the authority, I think, without question, to prescribe a domestic bill of lading.

Mr. EDMONDS. A domestic bill of lading?

Mr. BENTLEY. If they do not care to prescribe it they may leave it to the shippers or carriers to work out in joint agreement.

Mr. EDMONDS. I am very much of the opinion that the Shipping Board has authority to supervise rates in regard to the overseas traffic. It may be possible that they have not in the way of coastwise traffic—that is, outside of the States business that is interstate business. But this is in the foreign trade, and I am very much of the opinion that a uniform bill of lading recognized by the Interstate Commerce Commission, as far as the railroad end is concerned, and by the Shipping Board as far as the shipping end of it is concerned, could be used and that could be prescribed as the only bill of lading of that character that could be issued.

Mr. BENTLEY. I was coming to that point. I was first speaking of the domestic bill which is a bill under the Interstate Commerce Commission. There seems to be some question under the action of Congress as to whether or not the Shipping Board or the Interstate Commerce Commission has authority over a joint through bill of lading from the interior to the ocean. I think it is fully within the power of Congress to designate what those rights and powers may be in the bill of lading, and, if they wish any detail, if they care to do so, to put up to some body a clean cut proposition to give them authority.

Mr. EDMONDS. I will correct my statement by saying that I thought the Interstate Commerce Commission had the right to make a rate coastwise between points within the States, but I am not quite sure they have the right. I have talked with Mr. Lissner and he said he thought the Shipping Board had supervisory power over that also, because the act says so.

Mr. BENTLEY. That is where I think there should be further action on the part of Congress. There is some difference between the shippers and the Interstate Commerce Commission as to what the respective rights of those two bodies are. My personal judgment

is that the Interstate Commerce Commission should perhaps have authority, because it would take away the possibility that the Shipping Board, on account of operating a fleet, might be biased as to what might be proper to place on any bill of lading and the Interstate Commerce Commission would be left absolutely free.

Mr. LEHLBACH. But would not the experience of the Shipping Board as an operator stand it in good stead?

Mr. BENTLEY. The Shipping Board would be a very powerful adviser to the Interstate Commerce Commission in a case of that kind. However, whichever way you may deem it wise to put it, I think it was clearly designed by this statute that either the Shipping Board or the Interstate Commerce Commission should have authority. Having as a basis the basic act on which to build the bill of lading, then put it in the authority of one of the two bodies to prescribe the form of bill of lading and give that body the necessary authority to supervise changes in the act or in the bill of lading conditions from time to time as conditions might warrant. In other words, give them the same leeway the Interstate Commerce Commission has to change rules and regulations. That would be my theory of it as a personal matter.

Mr. LEHLBACH. You think this power ought to be placed in one or the other body. If it were practical or possible to have it, it could be joint also?

Mr. BENTLEY. It might be worked out, but experience seems to demonstrate that if you leave it to two bodies you do not get action. The Interstate Commerce Commission has authority to put it in there for domestic shipments; there is no question of that. There is no question but what the Shipping Board has authority over exports. The question is whether the Interstate Commerce Commission or the Shipping Board is best fitted to prescribe through bills of lading, each one of them having supervision over a part of that through movement, and the question of whether the Shipping Board would be a permanent institution or not might enter into it.

I think it is hardly necessary to go over this bill of lading which we proposed because at that time there was no question of changing the basic law of the Harter Act, which was in effect. Neither the Interstate Commerce Commission and the Shipping Board had authority to make a change in the law prescribed by Congress. All they could do was to administer or interpret the basic law by Congress; so that the work the National Industrial Traffic League did in presenting this bill of lading was based on existing conditions at that time. If we had the right or authority to have gone into a change in the act itself, I will say that the league would have made a somewhat different proposition than they made in this form. I will leave with the committee this proposed bill of lading, divided into sections, as carried under the act at that time.

Mr. LEHLBACH. That will be filed with the committee for its examination.

Mr. BENTLEY. As regards any change in the basic law, the Harter Act, I think, a few very small changes in the act, and then interpreted the way an ordinary man would read English would pretty nearly fix this situation. The first clause, article 7237—I am taking it direct from Barnes Federal Code, page 1726, reads:

Limitation of liability by bill of lading or other document.—It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage—

I would add before the word "loss," "the full actual loss or damage," which would bring it in line with the Cummins Act for all rail transportation, and clarify that part and make it read "for the full actual loss," making no change in the balance of the paragraph excepting to add that "the burden of proof shall be on the carrier" in place of on the shipper. That is also on the domestic bill of lading and is the proper place, because the carrier has the possession of the facts and the shipper, away off, has no way to ascertain them except the carrier is kind enough to give them to him. The balance of the article reads:

from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Article 7238 I would not change at all.

Article 7239 is headed, "Exceptions to general rule of liability." I would strike out part of the article. It reads this way:

If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthly and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel—

I would cut out the words "in the management of said vessel." I know of no reason why the management of the vessel should not be liable for the property when they should make mistakes especially or get careless. They can now hide behind this clause of "the management of the vessel" to deny liability. I do not know of any reason why if they damage your goods you should not hold them, and why the vessel should not be held responsible for damage or loss.

nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from inefficiency of package—

I would strike from this clause the words "inefficiency of package." There is no reason why a carrier should receive freight in poor packages at all. In the domestic law the carrier has the right to refuse to receive freight not properly packed. I believe the law is already there, and if it is there, all right. If it is not there, this could well come out just the same and let it stand without that.

or seizure under legal process or for loss resulting from any acts of omission of the shipper or owner of the goods, his agent, or representatives, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

I am informed by others, not of my own knowledge, that that last sentence has met with considerable misapprehension. In other words, the words "in rendering such service," I hold and always have believed, meant that such services meant only that of attempting to

save life or property at sea; but as there seems to be some question about it, I would suggest in addition the following words: "such service in saving life or property," so as to absolutely clarify it, if that is all that is intended there.

Mr. LEHLBACH. To what do they claim such service refers, if anything, other than saving life or property?

Mr. BENTLEY. I have been told that they admit that is as an exception to that whole paragraph. It would not hurt to clarify that by saying "such service in saving life or property." That would make it absolutely clear and what was intended.

In the last article, article 7240, coming down to the last document, I will not read it all, " * * * and such document shall be prima facie evidence of the receipt of the merchandise therein described."

I would make it read, "receipt and condition of the merchandise therein described." In other words, if the package is tendered by rail to a shipper in apparent good order and a receipt is given, it should be given not only for the merchandise but for its apparent condition.

Then the question of concealed losses comes up. It is the most difficult one to handle, possibly, that there is. That is taken care of in the rail act. Where concealed loss is located at destination and investigation fails to point out on which line transporting it, and you can not locate the road on which it happened among the rail carriers, the rule is to prorate that loss among all the carriers participating, on the basis of the revenue received out of the total. Where you get concealed losses on a shipment from St. Louis to New York going to London, and it is checked out short at London, due to pilferage somewhere en route, and it was in apparent good order at shipside in New York City, and investigation fails to locate where the pilferage was done, if you follow the rail practice on losses you would prorate from the commencement of shipment to destination, on the basis of the earnings received. I do not know of any better plan to follow in the case of concealed losses.

I think that covers my statement. Mr. Chairman, I did not know what I was coming down here for, and I had no opportunity to prepare. I have learned since I got here, and my talk is from general knowledge of the business.

(The form of bill of lading above referred to was filed with the committee.)

Mr. LEHLBACH. Are there any questions that any member of the committee, or those sitting with them, desire to ask of Mr. Bentley? If not, the committee appreciates your information, Mr. Bentley.

We will now hear Mr. Burchmore. May I ask, Mr. Burchmore, whether you can tell us approximately how much time you desire?

(The following statement was ordered printed in the record:)

ILLINOIS STEEL CO.,
Chicago, July 26, 1921.

Mr. FREDERICK R. LEHLBACH,
House of Representatives, Washington, D. C.

DEAR SIR: With reference to the hearings before your subcommittee last week, at which the writer appeared as chairman of the bill of lading committee of the National Industrial Traffic League, if not already advised you will probably be interested in the action taken by the International Chamber of Commerce on this subject at their meeting in London, England, the last week in June. I inclose herewith a copy of the action with reference to marine bills of

lading and marine insurance. This was referred to in the hearings with the suggestion that the International Chamber of Commerce was a good medium to carry out this desirable program.

Yours, very truly,

F. T. BENTLEY, *Traffic Manager.*

UNIFICATION OF COMMERCIAL PRACTICE.

The chamber believes it to be highly important to unify, as far as reasonable, feasible diverse commercial practices of different nations when such practices are detrimental to commerce, and to that end—

(*a*) The chamber directs that a special committee be appointed to take the necessary steps to secure the uniform measurement of application of the rules for such measurement.

(*b*) The chamber expresses its deep interest in the proposition that railroad and navigation systems of neighboring maritime countries conclude between themselves agreements with the object of placing at the disposal of the shippers a bill of lading or other certificate of transportation made out to a specified person and covering transport by rail and transport by sea. The national committees of neighboring maritime countries interested in securing such combined land and sea transportation are to take this question up directly with the railway and navigation systems and underwriters in turn with a view to accompilshing this result. The chamber is of opinion that the question of insurance will require special consideration.

(*c*) (1) The International Chamber of Commerce is unanimously in favor of obtaining a uniform international ocean bill of lading with appropriate uniform clauses for use in special trades and at particular ports.

(2) A permanent committee shall be appointed by the directors which shall cooperate with the International Law Association and the Comite Maritime International in their efforts to obtain uniform legislation respecting ocean bills of lading.

(3) Pending the passage of such uniform legislation and following the precedent established on the adoption of the York-Antwerp rules, the said committee shall investigate and report to the directors as to the possibility of obtaining a general agreement with ocean carriers for the voluntary acceptance by them of uniform obligations.

STATEMENT OF MR. JOHN S. BURCHMORE, REPRESENTING BORDERS, WALTER, BURCHMORE & COLLIN, 1623 FIRST NATIONAL BANK BUILDING, CHICAGO, ILL.

Mr. BURCHMORE. I think it will take me just about five minutes, Mr. Chairman.

Mr. LEHLBACH. Proceed, then. State whom you represent.

Mr. BURCHMORE. I am counsel for the National Industrial Traffic League, representing the bill of lading committee with Mr. Bentley. I do not want to cover the subject in general at all, but just to make one or two special observations that he did not make, and that have not been made here to-day.

I gathered from questions that were addressed by Mr. Campbell to the gentlemen to whom they were addressed this afternoon that he had in mind perhaps a point that has been discussed somewhat among ourselves of—where does this pilfering occur? That is, goods are drayed at New York, we will say, down to the steamer and are loaded and then unloaded from the steamer at the other end, and then taken into the custody of the consignee, and there is a concealed loss within the package. Where do these losses occur, and is the carrier, the ocean carrier, to be charged with the full responsibility for that loss which may have occurred while the goods were in the possession of the teamster on this side, or which may

have occurred, perhaps, after they left the carrier's possession on the other side?

Now, that seems on the face of it to be a pretty big question, to be a question that may be of real importance in deciding these matters here, and these observations occur to me in connection with it, or in reply to it:

In the first place, you have the precise question arising to-day, or likely to arise to-day, on rail transportation in this country; in the city of New York a drayman, a carter, takes a box or a number of boxes down to the freight station and turns them over to the carrier. The carrier does not open those boxes, but places them in the car and transports them to the other side of Arizona or California or Oregon and turns them over to the consignee there. The consignee takes them out to his store, opens them up, and finds that there are a dozen pairs of shoes missing, or a dozen pairs of something else missing. Now, you would think, if there was any real danger of this question being one of grave hardship to the carrier, it would be one that would arise daily and would be one of great embarrassment to the railroads, but in our experience it is not so.

For instance, very recently we had put in our hands by a large shipper a claim against some railroads for movement of two or three thousand miles of a number of different consignments of goods. The first one of these consignments numbered some hundred cases, which were drayed down to the station, loaded into a freight car, the car was sealed by the carrier, believed to contain the full number of cases; when it reached the destination point the seals were intact. They opened the doors, took out the packages, and found that half a dozen packages were missing.

Now, probably those packages were not removed from the car in transit, for the seals were intact. The next shipment was handled in the same fashion. The cases were removed at destination, and they were all there when taken into consignee's place of business. A case was opened and a dozen boxes of mufflers or silk neckties were missing from the case. In that case it hardly seems likely that the goods were removed while the car was rolling from the point of origin to destination. Now, what does the carrier do? The carrier either pays that claim, if it is reasonably satisfied that it is responsible for the loss, or, as in this particular case, it refuses to pay that claim, whereupon the shipper brings his suit, and he must establish that the goods were not delivered by the carrier at destination, that there was a shortage, and as proof that they were delivered to the carrier at the point of origin he introduces his bill of lading, which is a receipt for those goods. The carrier, however, is not estopped by that bill of lading, and if it can show that it did not receive the goods it may nevertheless block the recovery.

Now, it might be said that in particular cases the carrier might be unable to prove that it never received the goods. Well, if that be so, it seems to us that all losses that are in fact paid by the railroads in the United States—loss and damage claims that are paid by them—they are in the last analysis recompensed for in their freight rates. The rates are made high enough to cover the payment of claims, and that means not only just claims that are paid, but it means unjust claims that are paid, and in that small percentage of cases where the

carrier might be held liable unjustly, through goods that it failed to receive, nevertheless its freight rates would cover that.

This very condition that is being suggested seems to be taken account of in the bill of lading act approved August 19, 1916. (39 Stat. at Large, 538.) This bill of lading act applies in its initial paragraph to—

> Bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States or the District of Columbia, or from a place in a State to a place in a foreign country, shall be subject to this act.

Section 20 of that act provides that when goods are loaded by a carrier—I am reading the act:

> When goods are loaded by a carrier, such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity of bulk freight, and such carrier shall not in such cases insert in the bill of lading or in any notice, receipt, contract, or regulation, the words "shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by shipper and the description of them made by him; or in case of bulk freight and freight not concealed by packages, the description made by him.

Then in section 21 it says:

> When a package of freight or bulk freight is loaded by the shipper and the goods are destroyed and the bill of lading merely by a statement of marks or labels upon them, or upon packages containing them, or upon a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity, or in a certain condition, or that the contents or condition of the contents of packages are known, or words of like purport are contained in this bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels indicate.

Then over in section 22 we deal with the liability of the carriers. The Federal statute deals with the liability of the carrier in these words:

> If a bill of lading has been issued by a carrier, or on his behalf by an agent or employee, the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor, for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to—
>
> (*a*) The owner of the goods covered by straight bill of lading, subject to existing right of stoppage in transit, or,
>
> (*b*) The holder to the bill of lading who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods.

They are made liable for the nonreceipt of the goods, if they give out a good clear bill of lading under those circumstances.

I am only calling attention to that statute as having a direct bearing upon and expression of the very question raised in these questions of Mr. Campbell, and I think that is a question here before your committee.

Your honor addressed a question to Mr. Herrick as to whether it is not poor policy to limit the right to contract. I am one of those inland lawyers that he referred to that can only read the terms of the bill of lading and tell the shipper that he has got no case. My experiences with this matter are second hand. It is what I have learned from clients and shippers in regard to their claims. They

do not come to us when the shipment goes through safely and in good order, but when they get a claim they come to us. We look the claim over. If we think they have got a case we send it down to one of the seaport lawyers, and he generally writes back, "Clause 109 of the bill of lading makes recovery impossible." And then in that connection we learn all that happened.

Now, you ask whether it is poor policy to limit the right to contract. I have examined a little into that question as a practical question, and I ask Mr. Speer, of Morris & Co., when he has a claim that the steamer turns down and the lawyer at New York says you can't sue on, because the small type prevents it—I ask him, "Well, why did you ship this subject to all those conditions?" Or, "Why did you release this stuff to the value of $100 per package?"—I have forgotten just what the release is. He says, "This is our experience: We have a shipment that is so valuable we do not want to limit it to $100 per package, and we try to ship it the other way. We wait two weeks to try to get a rate from the steamer's agent, and he can not give us a rate, and then we have got to ship, so we ship it under the terms of the bill of lading and pay the rate that he does know."

It may be poor policy to limit the right to contract, but the freedom of contract implies an actual freedom on both sides, and the situation is to-day, with the steamers running from the ports in this country to foreign ports, that the shipper has got to take a bill of lading as offered by them or not ship at all. That is the practical situation as they tell it to their lawyers, and that means we are not limiting the real right to contract.

Mr. LEHLBACH. Can you tell us whether the steamship companies in that particular, with regard to the form of contract, etc., have that understanding or act in concert, or have you no knowledge as to that?

Mr. BURCHMORE. I have no personal knowledge. I only know that different concerns that we represent in these matters tell me from time to time—not in connection with this investigation at all but just in ordinary conversation, educating their lawyer about these matters—that they have no real option; that they must accept these bills of lading and pay the rate that is the going rate in connection with them, or not ship at all, or postpone shipment beyond a reasonable time.

That is all I have to say, gentlemen.

Mr. LEHLBACH. It is now 20 minutes after 10, and I understand that Mr. Price would be perfectly willing to postpone his statement until to-morrow.

Mr. PRICE. Yes, sir.

Mr. LEHLBACK. Then the committee will stand adjourned until 10 o'clock to-morrow morning, to meet in this room.

Before we adjourn I will make this announcement, that if there is anyone present who desires to be heard, who has not submitted his name, we will be glad to receive it.

(Whereupon, at 10.20 o'clock p. m., the committee adjourned until 10 o'clock a. m., Tuesday, July 19, 1921.)

SUBCOMMITTEE OF THE COMMITTEE ON THE
MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, Tuesday, July 19, 1921.

The subcommittee met at 10 o'clock a. m., Hon. Frederick R. Lehlbach (chairman) presiding.

Mr. LEHLBACH. We will hear Mr. Price first this morning.

STATEMENT OF MR. F. H. PRICE, EXPORT AGENT OF THE MILLERS' NATIONAL FEDERATION AND MEMBER OF THE COMMITTEE ON BILLS OF LADING OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Mr. PRICE. I am the export agent of the Millers' National Federation and also a member of the committee on bills of lading of the National Industrial Traffic League.

Mr. Chairman and gentlemen, this call came while I was traveling, and I have not been able to prepare such statistics as I would like to have, but I want to point out a curious situation. I telegraphed to my office for certain papers I might need. Mr. Bentley picked up his file, and we came down here to find that the underwriters and ourselves have unconsciously agreed on the same subjects, which I think demonstrates there is only one way out of this situation, and that is to amend the shipping act.

The flour millers of the United States have a very special interest in these proceedings, because they were among the first people engaged in the export trade to agitate in a serious way the matter of ocean carriers' responsibility. The point of view which they originally had and which became incorporated in an act of Congress proposed for them by one of their number, Michael D. Harter, miller, of Fostoria, Ohio, and a Member of Congress, was much the same as that expressed to-day so ably and concisely by Mr. Rush. They had a vital grievance. Their flour was ill used.

Carriers used bags of flour as a platform on wet and muddy docks on which to handle other cargo. Carriers delivered flour to foreign buyers in a fearful condition, regardless of brands or marks, and denied liability for everything. Their bills of lading contained clauses which appeared to protect them. The export flour business was in danger of extinction. The Harter Act was drafted and, as drafted, it set out to hold the ocean carrier to a strict accountability, but exempting him from liability for damage caused by faults or errors of navigation as a reasonable concession. During the debate on the bill, or while in conference committee, it was altered. I have always believed it was altered surreptitiously. The word "management" was put in with "navigation" and, as enacted, the law contained that insertion.

Thereafter, it became the practice on occasion for the carrier, when sued for negligence, to plead, actually that the master or crew had been negligent in the management of the vessel, that the damage was caused thereby, and that by law they were permitted to be thus negligent. I recall within two years ago, or so, a case of the steamer *Western Night* that sailed from Seattle to a port in the Orient with a cargo of tin plate of various sizes and sorts, exported by one of the meat packers from Chicago. I saw the file and recollect that it

stated that the master had unshipped his ventilators and that a storm occurred and sea water found her way down in large volume into the hold of the vessel, damaging the tin plate. My understanding is that the carriers claimed exemption from liability because of that negligence in not covering up the traps of the ventilators, and I do not know what the outcome was, but I believe they succeeded in their plea. I also have with me a memorandum of a number of such cases, which I will transcribe and submit as a part of this record, cases where there was gross mismanagement of the steamer, resulting in excessive damage to cargo, and in every case the vessel owners made the plea that their master or crew had been negligent and therefore they were entitled to be exempted from liability; which is quite the contrary in the case of any other carrier in the country.

Exporters, our people and those who are members of our National Industrial Traffic League, continue to have many serious losses, caused by carriers' negligence, for which carriers are usually able to escape liability. These losses are a serious burden on trade and must be removed if American exporters are to develop and expand their foreign commerce, which also means the development of our American merchant marine.

The losses and damages to which I now refer are not covered by ordinary policies of marine insurance. Such policies insure against the acts of God, force majeur, and the public enemy. Act of God, according to our understanding, is a natural catastrophe to which man's negligence is not contributory. But the other losses I have in mind are those which result from sweat, generally due to defective ventilation, rain water while loading or discharging, or during lighterage engaged by the steamship companies, even though such lighterage is to be at the expense and risk of the owner of the goods; damage by contact with other goods liable to cause injury; by shifting cargo and other losses and damages due to improper or bad stowage. Such losses are not covered by ordinary cargo insurance.

Carriers usually are successful in evading liability for all or most of these damages. They accomplish this result by inserting clauses in their bills of lading; such clauses as those which limit the amount of their liability to a nominal figure, or by those clauses which stipulate that claims or notice of claims must be filed in writing at the port of destination within an absurdly short period of time. These clauses appear to have the sanction of the courts, although the Harter Act declares clauses of such import to be invalid. Other clauses, likewise prohibited by the Harter Act, but which have no court sanction, are inserted for the "immoral" effect, to frighten the claimant off, or to afford a basis of settlement at something less than the loss. Such clauses as these have been read by Mr. McComb and Mr. Herrick and need not be repeated here.

Our object is to sell and deliver flour in foreign markets in good order and condition, fit for immediate sale and consumption. I again confirm what the underwriters have said, that the insurance does not do that for us; it does not help us to develop our markets. The mere compensation for loss is unsatisfactory. Export shipments, except in special trades, are c. i. f., which is to say that in the case of damages and losses occurring from perils not insured against and exempted by the bill of lading, are for account of the buyer. But buyers in the case of United States Shipping Board steamers find themselves unable

to sue the steamer, to libel her, as they may do with regard to the commercial ships of any other nationality. They must bring their claims here, in the United States, which is manifestly unreasonable and unnecessarily difficult. But with respect to all other steamers of other flags the collection of claims of that character is almost impossible. As the steamship owners stated at the interstate commerce hearings a year ago, they pay only about 70 cents per ton per year. This amount is far too small to be punitory and less than the cost of efficiency.

We find ourselves in accord with Mr. Rush and his associates in asking for an amendment to the Harter Act, such as he had suggested, whereby the carrier may not limit his liability by any fixed sum, nor by fixing an unreasonably short time within which to file claims or to bring suit. Further, we ask that the interpolated phrases in the Harter Act relating to management be stricken out. We ask no amendment to the interstate commerce act and its amendments at this time.

Our shipments travel by through export bills of lading to the seaboard, or by domestic uniform bills of lading to the port. Under these bills of lading we have recourse against the rail carriers for losses occurring by rail and lighter, except those caused by force majeur; but in cases where lighterage to or from the steamer is engaged by the steamer, even though at the expense and risk of the shipper or owner of the goods, then we should be enabled to hold the steamer for losses arising from his failure to exercise due care and diligence to see that the lighters are seaworthy and properly equipped for the traffic intended.

During last year I was in the port of Habana in connection with the congestion of rice shipments at that port. Almost every steamer we examined discharged her cargo into lighters. It was, of course, an unusual situation, resulting in congestion and resulting in lighters being held loaded for several weeks or even months before they could be discharged. It was a rainy season and it rained every day, very heavily, indeed; and yet no care was taken by the steamship agents to see that these lighters or many of them were covered by tarpaulins. They hired the lighters; the merchants had nothing to do with them except to pay the expense when the bill came to them from the steamship company. They, the merchants, could take no steps of their own to secure protection. The rice became damaged to a point where the losses have caused great embarrassment to these rice merchants, and they have yet no recourse against either the carrier or the underwriter; but I believe they will bring claims against the carriers.

We make the same contention with respect to any damages and losses occurring while the property is being carried by a connecting carrier to a destination beyond the destination of the contracting steamer. The only contract that we have is the bill of lading signed by the master or agent of the contracting steamer. We may be safeguarded up to the limit of our laws with respect to the contract with the contracting steamer, and we may have no rights worth anything against the connecting carrier. We contend that our contracting carrier should make a contract with a responsible connecting carrier which will preserve to us our original rights and that we should look to our contracting carrier for our full reimbursement, he having

his recourse against his connection under his contract. We do not say, however, that the contracting carrier should be compelled to carry beyond his line; but if he does he should preserve to us our original rights under the contract he makes with his connection.

We contend with respect to all losses and damages, except those caused by the act of God and the public enemy, that the ocean carrier should be an insurer to the extent of the cargo owner's full actual loss, except for losses due to force majeur. In other words, we ask that the same measure of damages and degree of extent of liability imposed on rail carriers by the amendments to the interstate commerce act should be applied to the ocean carrier.

For that purpose we ask for another amendment to the Harter Act, to the effect that the damaged condition of cargo at the place of final destination shall be prima facie evidence of negligence, and the burden to prove freedom from liability to be upon the contracting carrier.

There is a definite and well-defined field for marine insurance. It may cover from shipper's warehouse in the interior or at the seaboard to consignee's warehouse at the port of foreign destination, or in the interior, by rail and steamer, against the act of God or the public enemy. By act of God is understood a catastrophe to which the negligence of the carrier is not contributory. Thus, while on the rails a cloudburst may cause a flood, destroying or damaging property; or the lighter or steamer may sink or strand because of a storm in the harbor or at sea; and in addition to which two disasters it is customary and proper to include collision and fire. The inclusion of rail and lighterage risks is on the same condition as the steamer insurance. Beyond that field it is not wise for underwriters to go, in our opinion, except in those special trades in which the marine underwriters by a special arrangement, as an aid to exporters in the development of special trades, to acquire the rights of cargo owners and hold the carriers to the same strict accountability as the shippers themselves would otherwise do.

But we must be fully protected. We are not to be blamed for buying it from the underwriters in the absence of legal rights against the carriers. We know that by buying insurance against all sorts of risks of transportation we have weakened our commercial position as competitors in the world's markets. We have, in effect, but only recently realized it, aided and abetted the ocean carriers in adopting and securing their present privileged position.

We have given our time and energy to securing proper control of the rail carriers and, in the meanwhile, the ocean carriers have got out of hand, and the United States courts appear to have aided them. Now we have to ask the Congress for the same assistance it has given us with respect to interstate commerce, and I beg to recapitulate the items of our petition, namely: First, we want the carriers liable for our full actual loss; second, a reasonably long time to present and sue on claims; third, we desire the omission of faults of management from the Harter Act; fourth, we desire that the liability of the carrier shall extend to the final delivery, by lighter or by connecting steamer; and fifth, the burden of disproving liability to be on the carrier.

Finally, we ask an amendment to the present shipping act, whereby it is possible for foreign claimants to attach United States Shipping Board boats in foreign ports.

The law of England, as exemplified by the Corinthian case (Crawford & Law *v.* Allan Line. House of Lords), holds the ocean carrier to a strict accountability for noting damages at time of receipt, as was the intention of our Harter Act. Consequently, we are asking nothing new or untried when we ask these amendments to the Harter Act. Our experience is that the only way we can successfully have our exports policed and guarded from damage in transit is to procure the full enforcement of carrier's legal liability.

Apart from that question we have another matter to bring before your committee which relates to the difficulties experienced by our importers in taking delivery at foreign ports. It appears that certain United States Shipping Board steamers have been advertised to sail on stipulated fixed dates. Contractments of affreightment were made accordingly. The steamers either did not sail or were delayed, resulting in suits against shippers for nonfulfilment of contract to ship in the time stipulated. The consignees have suffered serious loss of profit and market, and have written to our headquarters in Chicago asking us to procure changes in bills of lading which will prevent such occurrences in the future. I submit copies of these letters herewith, and at the same time I ask you to adopt the suggestions they make as to receipt on board.

We ask for one uniform bill of lading as to all liability clauses, to be in strict conformity with the Harter Act as amended. Each carrier will, of course, add special delivery clauses required for special routes. We ask that there be set up a proper authority to prescribe the form and substance of these liability clauses, in order that there may not be inserted in bills of lading any threat clauses or clauses meant to intimidate the shipping public. The bill of lading act, known as the Pomerene bill, governs the matter of receipt and fixes the status of concealed losses, such as pilferage, and affects both ocean and inland carriers. Consequently there should be no difficulty in arriving at substantial uniformity after the Harter Act has been amended as has been suggested. As to liability for loss and damage, the carriers may set up the bugaboo of increased freight charges; but our experience with carriers is that that matter adjusts itself. I do not believe, with all the figures that the underwriters have brought before us, that the total tax on the exporters of this country would amount to a fifth of 1 per cent. It is too small a matter to consider as an argument for advancing any freight rates. Competition will regulate freights, and the cost of negligence will force the carriers to efficiency, thereby preventing a large measure of loss and damage, which will be exactly what the export trade requires and demands.

I have the letters from the National Association of Flour Importers to which I referred, which, if the chairman would like to have done, can be read. They relate to the things which I have spoken of, of the failure of steamers to leave on the dates advertised, resulting in loss of profits and markets, which ought to be guarded against by a proper clause in the bill of lading.

Mr. LEHLBACH. The committee will be glad to have them read, Mr. Price.

Mr. PRICE. This is a letter from the secretary of the London Flour Trade Association:

The present bills of lading issued for sacked goods in the United States of America and Canada are in many ways unsatisfactory and the London Flour Trade Association now has the whole subject under consideration.

The first steps taken must be to insure that ocean bills of lading are correctly dated, i. e., dated with precision and neither antidated or postdated.

Many instances given to the association prove that goods are often placed upon vessels at dates other than those given upon the bills of lading.

My association requests the Millers' National Federation to immediately approach all steamship lines and obtain written assurances that for the future the date given upon every ocean bill of lading shall be the exact date of the goods being actually and finally upon the vessel stated in the bill of lading.

This action is necessary in the interests of the exporting millers as well as the importers this side. Careless dating of documents will inevitably result in serious losses and complication.

When bills of lading are worded "received to be transported by" or some such similar phraseology, this should not affect the fact that the date given upon the document must be the date when the goods were actually placed upon the vessel. To argue otherwise is to turn a bill of lading into a mere dock receipt.

The steamship lines are and must be aware when goods are actually loaded into vessels. Further, it has been stated that in practice bills of lading are not given up to the shipper till the goods are on board, therefore there does not appear any difficulty in the way of correct dating.

In view of the possibility of serious price fluctuations in the near future, the Millers' National Federation will be well advised to get the matter put right immediately.

The simple issue is that a bill of lading must be what it purports to be. An ocean bill of lading must give the goods as loaded upon the steamer named on the bill of lading and also the exact date when the goods were actually and finally placed on board.

My association is convinced that the Millers' National Federation will readily see that a bill of lading is a document of primary importance, and it is vital that carelessness in dating shall not be permitted.

Mr. GAINES. May I ask a question? I did not hear the first part of the letter. Was the complaint there made of both Canadian and American shipping?

Mr. PRICE. Yes, sir. But the claims that were discussed chiefly arose from steamers, I think, from Philadelphia, of the Shipping Board, which did not sail on the dates advertised and the flour did not leave this country for several weeks after the fixed advertised dates. When the flour arrived in London, the market had declined so radically that it could not be sold at anything like the price it was bought for; and as a result suits were brought against the shippers by the consignees, because of their failure to ship in time.

Mr. EDMONDS. What line was that?

Mr. PRICE. I do not know the name of the line; I will have to look up my records to get the steamers' names. They began with the word "West." There were two or three of them.

Mr. EDMONDS. Two or three steamers?

Mr. PRICE. Two or three steamers; yes, sir.

Mr. EDMONDS. They belonged to the International Freighting Co., I suppose?

Mr. PRICE. I do not know, sir, the name at the present moment. I do not know the exact date, of course.

Mr. EDMONDS. I just want to say it was not a Philadelphia concern, because we always ship right on the date. [Laughter.] It was probably a New York steamer down there getting a load.

Mr. PRICE. No, sir. I would like to be able to agree with you, but I recollect in this particular instance there were more than this one I speak of; but I can not remember the steamer's name, but it was a Philadelphia steamer.

Mr. EDMONDS. It was not a Philadelphia steamer; it may have been built in Philadelphia and allocated, probably, to a New York operator, because Philadelphia steamers operate right on the date. [Laughter.]

Mr. PRICE. What we say is if the steamer is booked to sail, say, the last of May, or the last of the month, she should sail in that month and not beyond that month.

I believe that completes my notes, gentlemen.

Mr. GAINES. May I ask another question. Mr. Herrick put in the record, yesterday, a very interesting Norway bill of lading; have you the English bills of lading that you could file, for comparison with the American and Norwegian bills of lading that we have been furnished?

Mr. PRICE. I have not, but I think I can procure a series of foreign bills, English bills of lading, if they are wanted by this committee.

Mr. EDMONDS. I would like to have, as near as possible, all of the bills of lading that you can possibly get of the different lines, both of the foreign lines and the American lines, so that they may be inserted in the hearings.

Mr. PRICE. I will be glad to supply you, at the earliest possible date, with a series of bills of lading issued in Great Britain and by various lines, privately owned, as well as Government owned, in this country.

Mr. EDMONDS. You will get those for us?

Mr. PRICE. Yes, sir.

Mr. GAINES. Do the English shipowners use a uniform bill of lading?

Mr. PRICE. No; I do not think they do; I do not think there is a uniform bill of lading in England.

Mr. GAINES. What I wanted to get at was whether the uniform bill of lading that you mention as desirable to be required of American shipowners by law, was required by the laws of other competing countries.

Mr. PRICE. I do not think so, sir. We do not ask that the ocean bill of lading should be absolutely uniform in all respects, but only as regards those liability clauses which are necessary in connection with the legislation we have.

Mr. GAINES. Yes. Well, are the other foreign bills of lading uniform in that respect?

Mr. PRICE. I do not know, sir; I have never examined them with that purpose in view.

Mr. GAINES. Do you know whether the foreign laws make such requirements as you wish now to have made by the amendment which you propose to the Harter Act?

Mr. PRICE. No, sir; I do not know. I ask that uniformity because we have it with respect to our inland transportation and we would like it with respect to our ocean transportation.

Mr. GAINES. Yes; I know; but the railroad uniform bills of lading in this country are not tied up with foreign competition. What

I wish to know is whether there is such a uniformity in bills of lading in connection with ocean shipping in other countries, as you desire to be required in this country, by law?

Mr. PRICE. I do not know, sir.

Mr. EDMONDS. The amendment of the Harter Act would not necessarily mean a uniform bill of lading?

Mr. PRICE. No, sir.

Mr. EDMONDS. An ordinary amendment to the Harter Act, requiring the steamship owners to accept their liability, would not mean a uniform bill of lading.

Mr. PRICE. Exactly.

Mr. EDMONDS. The question of a uniform bill of lading and an amendment of the Harter Act are two entirely separate subjects.

Mr. PRICE. Yes, sir.

Mr. LEHLBACH. As the witness says, one is a complement of the other; that, having such legislation—an amended Harter Act—that the bills of lading should be uniform in so far as they apply to the assumption of liability by the carrier in conformity with the amended law?

Mr. PRICE. Yes, sir. But with respect to other matters of traffic, delivery, and all those sorts of things, which are varied by the routes by which steamers sail, or the ports to which they go, those matters would be left to the carriers to fix for themselves. As a matter of fact, I might say that there seems to be a certain amount of uniformity under bills of lading. They all seem to refer to the same general average clause, for instance; they seem to conform with regard to those things for which they are not responsible, like act of God, public enemy, etc. I only ask that they supplement that uniformity by having it apply to their liabilities imposed upon them by the legislation.

Mr. EDMONDS. I think my friend, Mr. Campbell, drew such a good bill of lading for liberality that they all copied it. [Laughter.]

Mr. GAINES. What I was trying to get at was whether there was any other country—for instance, Great Britain, Norway, and France—where such a requirement was made on their shipping as you desire to be enacted into law in this country for American ships.

Mr. PRICE. I do not know anything about it, sir; but I imagine there is no such requirement in foreign laws.

Mr. LEHLBACH. We will now hear from Mr. Downes, of the American Manufacturers' Export Association.

Mr. PRICE. May I say one more word, please, at the request of my chairman?

Mr. LEHLBACH. Yes.

Mr. PRICE. If we had this uniformity for which we ask, we could no doubt rely upon the machinery of the International Chamber of Commerce to secure uniformity in foreign countries along the same lines. There is no reason why we should not institute a reform in this country which may set the pace for other countries to follow.

(The letters submitted by Mr. Price are as follows:)

NATIONAL ASSOCIATION OF FLOUR IMPORTERS.
20, Byward Street, London, E. C. 3.

SECRETARY MILLERS' NATIONAL FEDERATION,
Chicago, Ill.

Re ocean bills of lading.

DEAR SIR: In February last my association forwarded you a letter from the London Flour Trade Association of which a copy is now inclosed.

You will see that the crux of the matter is that over here whatever form of B/L is used, a B/L should only be dated when the goods are actually on board. If in the United States of America you could insist upon this rule being strictly carried out many troubles will automatically disappear. It would, for instance, be impossible for a merchant here to receive an ocean B/L for flour and the steamer named in such a document not to carry the flour at all. I need scarcely point out to you this has a bearing not only upon the time of shipment but the marine insurance and is altogether satisfactory.

We quite understand that there may be certain difficulties which you have to encounter when selling for seaboard shipment, but these difficulties seem to be easily overcome by an exporter who sells wheat for a definite seaboard shipment. Bills of lading for wheat are dated always when cargo is actually on board the export steamer.

I do not think that nowadays the feeling of an American miller is that having handed the goods over to a steamship line in good time the liability on the part of the miller is ended.

Somehow steamship lines must be made to live up to their engagements. Should a steamship line not be able with safety to undertake first half of June loading, then it should contract for, say, all June. What is the use of a contract at all unless such a contract is carried out? The present system makes it quite possible for a steamship line to accept space at a premium rate and then calmly defer the original booking.

I feel firmly that this subject must be thrashed out. You will, of course, at once understand we do not wish to press difficult conditions upon American millers, because, as a matter of fact, we are very anxious to assist them.

Technically, as things stand at present, all goods which are not on board vessels within contract time are defaults on the part of the shippers.

If the Millers' National Federation will please at once get to work upon the matter, doubtless between the two associations we can get seaboard shipments placed upon a sounder basis, and everybody concerned, including all the steamship lines, must ultimately greatly benefit by engagements being carried through.

It is imperative that wheat does not get a sound freight contract, while flour gets a loose one.

You will realize how important it is that the American milling interests obtain exact shipments. In the past, United States flour has suffered severely this side through lack of continuity in supplies.

After the federation has tackled the matter, please report progress as soon as you conveniently can.

I remain, dear sir,

Yours, very truly,

ROBT. C. HENDERSON, *Secretary.*

LONDON FLOUR TRADE ASSOCIATION,
CORN EXCHANGE,
London, February 2, 1921.

SECRETARY MILLERS' NATIONAL FEDERATION,
Chicago, Ill.

DEAR SIR: The present bills of lading issued for sacked goods in the United States of America and Canada are in many ways unsatisfactory, and the London Flour Trade Association now has the whole subject under consideration.

The first steps taken must be to insure that ocean bills of lading are correctly dated, i. e., dated with precision and neither antidated or postdated.

Many instances given to the association prove that goods are often placed upon vessels at dates other than those given upon the bills of lading.

My association requests the Millers' National Federation to immediately approach all steamship lines and obtain written assurances that for the future the date given upon every ocean bill of lading shall be the exact date of the goods being actually and finally upon the vessel stated in the bill of lading.

This action is necessary in the interests of the exporting millers as well as the importers this side. Careless dating of documents will inevitably result in serious losses and complication.

When bills of lading are worded "Received to be transported by" or some such similar phraseology this should not affect the fact that the date given upon the document must be the date when the goods were actually placed upon the vessel. To argue otherwise is to turn a bill of lading into a mere dock receipt.

The steamship lines are and must be aware when goods are actually loaded into vessels. Further it has been stated that in practice bills of lading are not given up to the shipper till the goods are on board; therefore there does not appear any difficulty in the way of corrective dating.

In view of the possibility of serious price fluctuations in the near future, the Millers' National Federation will be well advised to get the matter put right immediately.

The simple issue is that a bill of lading must be what it purports to be. An ocean bill of lading must give the goods as loaded upon the steamer named on the bill of lading and also the exact date when the goods were actually and finally placed on board.

My association is convinced that the Millers' National Federation will readily see that a bill of lading is a document of primary importance, and it is vital that carelessness in dating shall not be permitted.

Yours, faithfully,

J. H. PILLMAN, *Secretary.*

11 HART STREET,
Mark Lane, London, E. C.

NATIONAL ASSOCIATION OF FLOUR IMPORTERS,
London, E. C. 3, July 4, 1921.

SECRETARY MILLERS' NATIONAL FEDERATION,
Chicago, Ill.

DEAR SIR: I shall be glad if you will bring this letter before your president.

At a recent meeting of the council of this association a very full discussion took place respecting shipments by the American Shipping Board steamers, and I was requested to put the subject to you in order that the matter could be dealt with through the Millers' National Federation.

At present there are certain features connected with shipments by vessels of the American Shipping Board, which do not meet with the approval of the United Kingdom imported flour trade.

My council feel that the American Shipping Board itself is anxious that its services should be of the highest quality and will therefore give every attention to our expressions of friendly criticism conveyed through the Millers' National Federation.

The Glasgow delegates gave many examples to prove that an undue period elapsed between the time of bill of lading date and actual arrival in Glasgow. A certain amount of this delay has arisen from vessels touching at several ports both sides en route. I am sending you a list giving six examples of delay, furnished by the Glasgow Flour Trade Association.

It would also appear that the stowage of flour has been somewhat careless—too many parcels do not arrive in good condition—sweat and also oil taint have been very noticeable.

The London delegates raised the point that London clause charges (i. e., landing on the quay and sorting and then delivering from dock quays to barges) were demanded although goods were delivered overside, charges demanded and no services rendered.

My association desires to put the matter very frankly to you; the general impression of all ports is that the agents for the board assume too autocratic an attitude generally, and the suggestion is made that the American Shipping Board should instruct its agents this side that every assistance and consideration must be accorded to imported flour.

Will you kindly have the above matters thoroughly looked into and advise me at the earliest possible date what improvements my association may expect in the near future.

Would it not be advisable for the American Shipping Board to have one fixed agent, fully conversant with the handling of flour in every United Kingdom port?

I am convinced that our criticism will be welcomed and dealt with to the benefit of everyone concerned.

I am, dear sir,

Yours, very truly,

ROBERT C. HENDERSON, *Secretary.*

NATIONAL ASSOCIATION OF FLOUR IMPORTERS,
London, E. C. 3, July 4, 1921.

DEAR MR. HUSBAND: I feel that the bill of lading question will cause a lot of trouble one day unless put into good shape.

Strikes are covered in the contract between seller and buyer and do not affect the problem.

Kind regards to you personally,

Yours, sincerely,

FRANK T. COLLINS.

Above letter accompanied by the following:

JUNE, 1921.

CLAUSES.

Cunard Line: "Or failing shipment in whole or in part by the said ship, then in and upon other ships of the same line."

Bristol City Line: "Or failing shipment by said steamer in and upon a following steamer."

White Star Line: "Or failing shipment by said steamer in and upon a following steamer."

Canadian Pacific Ocean services: "Or other ship or ships sailing from the port of."

The Winchester Line: "Or failing shipment by said steamship in and upon following steamships."

The above clauses would be all corrected by bills of lading being only dated when goods are finally and actually on board a vessel.

These clauses seem on a par with a $100 bill "and/or other smaller amount than the sum shown on the face hereof." When is a bill of lading not a bill of lading? When it is a dock receipt.

F. H. PRICE & CO.,
New York, August 1, 1921.

HON. FREDERICK R. LEHLBACH,
Chairman Subcommittee on Marine Insurance,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: Responding to the request of your committee on the hearings on July 18, 19, and 20, we inclose herewith a statement of a number of law cases, showing that loss was sustained by cargo owners by reason of faults and errors of the master or crew in the management of the vessel. These are old cases, and if necessary, with some considerable trouble, we might produce a list of additional cases of more recent date. In fact, I am endeavoring to prepare such a list in the event and will forward it to you in due course.

We are also endeavoring to obtain a complete file of forms of steamship bills of lading. These will come to hand shortly from various ports and we will forward them to you at that time.

I also beg to file with your committee the inclosed copy of an article which I prepared for one of our western traffic publications.

Very truly, yours,

F. H. PRICE.

STATEMENT OF LAW CASES.

Steamship "Silvia" (171 U. S., 462).—Steamer sailed with a porthole in her between decks unsecured. Water entered, damaging her cargo. Held by the court that the porthole being open during the voyage was a "fault or error in the management of the vessel," within the meaning of the third section of the Harter Act, and the decision was in favor of the vessel.

Steamship "Sandfield" (79 F. R., 371, affd. 92 F. R., 663).—The opening of a sluice gate to empty the bilges was neglected for 20 days during heavy weather. Bilges overflowed and the water damaged the cargo. Held by the court that neglect to open the sluice gate was neglect in the "management of the vessel," within the meaning of section 3 of the Harter Act, and owners were exempted from liability thereby.

Steamship "Mexican Prince" (82 F. R., 484, affd. 91, F. R., 1003).—Steamer was a convertible-tank ship built to carry both fluids and dry cargo. Each compartment was connected with a pipe line by a Kingston valve operated from the deck. Ship sailed from Rio with No. 2 tank full of ballast water and the other tanks full of coffee in bags. After leaving Rio the ballast water was pumped out through the pipe line, but the valve in No. 3 tank was not closed and the coffee in that tank was damaged by ballast water. Those in charge failed to properly test valves, a very simple operation. Held by the court that the damage to the coffee arose from neglect in the "management of the vessel," within the meaning of the third section of the Harter Act, and that the ship was not responsible therefor.

Steamship "British King" (89 F. R. 872, affd. 92 F. R., 1018).—The cargo was damaged by water from a ballast tank which was found sprung and the rivets started after heavy weather. Held by the court that the failure to take soundings and to apply the pumps, as the known facts showed to be necessary, was, therefore, the final and immediate cause of the damage, but for this negligence the ship and owners are not liable, under the third section of the Harter Act, because it was negligence in the "management of the ship."

Steamship "Merida" (107 F. R., 146).—Hides were damaged by an accumulation of water in the bilges, due to a failure to use the pumps. Held by the court that failure to use the pumps was a fault in the management of the vessel, and the vessel was exonerated.

American Sugar Refining Co. v. *Rickerson* (124 F. R., 188).—Cargo was damaged by water entering the hold through a manhole in a ballast tank. Shortly after sailing the sea cock was opened for the purpose of filling the ballast tank and negligently left open for 7½ hours. Resulting pressure blew out the packing of the manhole joint. Held by the court to be negligence in the management of the vessel and the owner not liable.

Steamship "Wilderoft" (130 F. R., 521; 201 U. S., 378).—While the steamer was discharging a cargo of sugar in Philadelphia she took in water for her boilers thorugh a pipe line running to the engine-room tank. A valve connected to a pipe in this line was used to pump out her bilges. The sugar was badly damaged by water. Found by the court that the presence of such water could only be accounted for by the valve connecting the pipe leading to the engine-room tank and the pipe leading to the hold having been partly open, due to clogging by some foreign substance, having lodged when bilges were last pumped. Failure to see that this valve was properly closed was a fault in the management of the vessel and under the Harter Act the vessel was exempted from liability for such fault.

Sun Co. v. *Healy* (163 F. R., 48).—The tank steamship *Toledo* discharged a bulk cargo of molasses at Hoboken. The molasses was being pumped out and a sea valve not being properly closed water entered the vessel, diluting and damaging the molasses. Held that the failure to keep the valve properly closed was a fault in the management of the vessel, from liability for which the Harter Act protected the ship and her owner.

Steamship "Indranl" (177 F. R., 914).—Steamer arrived in New York with cargo stowed in the lower forepeak, occasionally used as a ballast tank and connected with the pumps in the engine room by a pipe running through the ballast tanks under No. 1 and No. 2 holds. She had picked up a piece of cable with her propeller in the Suez Canal, which was removed at Algiers. After arrival at destination and before cargo had been discharged from the forepeak, the master desired to examine the propeller, and to avoid expense of going on dry dock decided to tip the vessel by the head to bring the propeller out of water. This resulted in filling No. 1 ballast tank with water, and owing to the pipe wich ran through such tank to the forepeak having been fractured during the voyage, the forepeak filled with water, which was not discovered for several days, damaging the cargo stowed therein. Held to be a fault in the "management of the ship" and the vessel not liable.

F. H. PRICE & Co.,
New York, August 5, 1921.

HON. FREDERICK R. LEHLBACH,
Chairman Subcommittee on Marine Insurance,
Committee on the Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We inclose herewith copies of cargo policies, as requested by your committee. You will observe that these cargo policies set out to insure cargo

against a number of well-defined perils, which may all be classed under the following general captions: "Perils of the sea" (act of God) and the "Public enemy." Such policies may set out to pay a claim which amounts to 3 per cent P. A., which means a partial loss if it amounts to 3 per cent of the insured value, but the partial loss must have been caused by one of the perils insured against.

Cargo policies do not insure goods against loss and damage arising from bad stowage, shifting cargo, damage while being loaded or delivered, lack of ventilation resulting in sweat, etc.

All losses not insured against on c. i. f. sales fall on the buyer of the goods or upon the steamship company and they affect the expansion or development of our foreign trade, inasmuch as the steamship companies are generally excused from all liability because of the difficulty of compliance by consignees with the claim clause in the bill of lading and because packages are generally of higher value than $100, or whatever is the limit of value contained in the bill of lading, and because steamship companies are also protected from liability in case of damage to cargo arising from mismanagement of the vessel.

Very truly, yours,

F. H. PRICE.

F. H. PRICE & CO.,
New York, August 4, 1921.

HON. FREDERICK R. LEHLBACH,
Chairman Subcommittee on Marine Insurance,
Committee on the Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: With further reference to the proposed amendment to the Harter Act, you may be interested in reading a new law enacted by the Senate and Assembly of New York, copy inclosed herewith, section 3, which seems to put the burden to prove freedom from liability upon the carrier as regards damage ascertained by this port and State.

Yours, very truly,

F. H. PRICE.

[Laws of New York. Chapter 202. An act to amend chapter 405 of the laws of 1857, entitled "An act to reorganize the warden's office of the port of New York," generally. Became a law Apr. 14 ,1921, with the approval of the governor. Passed, three-fifths being present.]

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section 1 of chapter 405 of the laws of 1857, entitled "An act to reorganize the warden's office of the port of New York," is hereby amended to read as follows:

"SEC. 1. There shall be, and hereby is, established a board of wardens for the port of New York, which shall be called and known by the name and title of "The port wardens of the port of New York," and shall be composed of five members, one of whom shall be a nautical man who shall be nominated, and by and with the advice and consent of the senate appointed by the governor; and they shall annually elect one of their number president and another vice president. All appointments shall be for the term of five years, except that any vacancy shall be filled for the residue of the unexpired term. Any warden may be removed for misconduct or neglect of duty, at the discretion of the governor, and any warden neglecting or refusing to perform the duties of his office or violating the regulations of the board, after due notice from the board, shall be liable to suspension by the vote of a majority of the whole board, and during such suspension said warden shall not be entitled to participate in the pay and emoluments of said office unless reinstated by the governor, by and before whom an appeal shall be heard and decided."

SEC. 2. Section 2 of such act, as last amended by chapter 142 of the laws of 1891, is hereby amended to read as follows:

"SEC. 2. The said board shall have power to appoint a secretary and fix his compensation, who shall hold his office during the pleasure of the board, said compensation to be paid out of the receipts of the office. It shall be the duty of the secretary to keep, in such books as shall be provided for the purpose, a full, true, and complete record of all their acts, proceedings, surveys, and

reports, and such books shall be open to the public inspection of any person interested therein; and the said board of wardens shall have and use a common seal, and each warden shall have full power and authority to administer oaths, examine witnesses, and take affidavits concerning the business of said office; and the said board shall also have full power to make such rules and regulations for their own government and the discharge of their duties under this act as they may deem necessary and proper. They shall keep an office in the city of New York, at which office a majority of them and their secretary shall give attendance daily (Sundays and public holidays excepted), and shall have the exclusive right to perform all the duties of port wardens of the port of New York, specified in this act."

SEC. 3. Sections 3, 4, and 5 of such act are hereby amended to read as follows:

"SEC. 3. It shall be the duty of said board or some one of them to proceed in person on board of any vessel for the purpose of examining the condition and stowage of cargo, and if there be any goods damaged on board said vessel they shall inquire, examine, and ascertain the cause or causes of such damage and make a memorandum thereof, and enter the same in full upon the books of the office, and if after the arrival in port of any vessel the hatches shall be first opened by any person not a port warden, and the cargo or any part thereof shall come from on shipboard in a damaged condition, these facts shall be presumptive evidence that such damage occurred in consequence of improper stowage or negligence on the part of the persons in charge of the vessel, and such default shall be chargeable to the owner, consignee, master, or other person in interest (as part owner or master) of said vessel, each and all of whom shall be primarily liable for such damage. And the said board shall be exclusive surveyors of any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed to sea, and shall examine the condition of the hull, spars, sails, rigging, and all appurtenances thereof, and they shall call to their assistance one or more carpenters, sailmakers, riggers, shipwrights, or other person skilled in his profession, to aid them in their examination and survey, provided such person shall not be interested therein, and all parties so called shall be sworn and shall each be allowed a fee of $2, to be paid by the persons requiring said examination. The said wardens shall specify what damage has occurred and record in the books of said office a full and particular account of all surveys held on said vessel; they shall also be the judges of the repairs necessary to render said vessel again seaworthy, or for the safety of said vessel and cargo on the intended voyage. They shall also have exclusive cognizance of all matters relating to the surveys of vessels and their cargoes arriving at the port of New York in distress, or damaged in said port of New York, and shall be the judges of its fitness to be reshipped to its port of destination, or whether it shall be sold for the benefit of whom it may concern; they shall also, if called upon so to do, estimate the value or measurement of any vessel when the same is in dispute or libeled, and record the same in the books of said office.

SEC. 4. It shall be the duty of said board, or some one of them, on being notified and requested so to do by any of the parties in interest, to proceed in person to any warehouse, store, or dwelling, or in the public streets, or on the wharf, and examine any merchandise, vessels's materials, or other property said to have been damaged on board of any vessel, and inquire, examine, and ascertain the cause or causes of such damage and make a memorandum thereof of such property, and record in the books of said office a full and complete statement thereof; and it shall be the duty of the said board, when so requested, to furnish a certificate of any record in the books of said office to any party interested therein upon their paying to the said board the regular fee for said certificate. All certificates issued shall be under the seal of said office and signed by the president or vice president and by the secretary, and said certificate shall be evidence of the existence and contents of such record in any court of this State in all cases of inquiries, examinations, and surveys relating to vessels and cargoes on board thereof, as specified in this act. The said board shall give notice to all persons interested in or having charge of the subject matter of such inquiry, examination, or survey by advertisement in at least two daily newspapers printed and published in the city of New York of the pendency of such inquiry, examination, or survey, and of the time and place of completing the same, the expense whereof shall be added to and paid with the fee for making such inquiry, examination, or survey.

SEC. 5, It shall be the duty of said board or some one of the members thereof to attend personally all sales of vessels when condemned, vessels' materials and goods in a damaged state which shall be sold at public auction in the port of New York by reason of such damage, for the benefit of owners or underwriters or for account of whom it may concern; and it shall be the duty of auctioneers making such sales to give due notice thereof to said board before the sale, and all such sales shall be made by auctioneers under the direction and by order of the wardens, for which service they shall be entitled to receive a commission of one-half of 1 per cent on the gross amount of sales thereof, to be paid to said board of wardens on demand by the auctioneer making such sale; and such property shall be exempt from the payment of auction duties to the State, and it shall be the duty of auctioneers to make monthly statements to said board specifying the total amount of each day's sale made by them under this act, which statement shall be filed in said wardens' office, and the wardens, when required by the owner or consignee thereof, shall certify the cause of such damage, the amount of such sale, and the charges on the same, all of which shall be recorded in the books of said office; and the said board of wardens shall be allowed for each and every survey held on board of any vessel on hatches, stowage of cargo, or damaged goods, or at any warehouse, store, or dwelling, or in the public street or on the wharf, within the limits of the port of New York, on goods said to be damaged, the sum of $2, and for each and every certificate given in consequence thereof the sum of $1, and for each and every survey on the hulls, spars, sails, or rigging of any vessel damaged or arriving at said port in distress, the sum of $5; and for each and every certificate given in consequence thereof the sum of $2.50; and for each valuation or measurement of any vessel the sum of $10; and the compensation and emoluments of said office shall be divided equally between the said five wardens composing the board under this act.

SEC. 4. Section 7 of such act is hereby repealed.

SEC. 5. Section 8 of such act is hereby renumbered section 6 and amended to read as follows:

"SEC. 6. The said board of port wardens shall keep a full and accurate account of all their receipts and expenditures, and transmit to the comptroller a true copy thereof annually on the first Monday in each year, and which copy shall be verified by the oaths of the president and secretary of said board, and each warden shall append to such account an affidavit that he has not taken or received any money or goods as presents, directly or indirectly, for services as warden, except the legal fees."

SEC. 6. Section 8a of such act, as added by chapter 520 of the laws of 1918, is hereby repealed.

SEC. 7. The terms of office of the port wardens now in office shall expire on July 1, 1921. Prior to that date the governor, by and with the advice and consent of the senate, shall appoint five port wardens to hold office for the terms of five years, as provided by this act, from July 1, 1921.

SEC. 8. This act shall take effect July 1, 1921, except the provision of section 7 authorizing the appointment of port wardens by the governor, which shall take effect immediately.

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original law on file in this office and I do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

JOHN J. LYONS, *Secretary of State.*

STATEMENT OF MR. E. H. DOWNES, NEW YORK, N. Y., EXPORT MANAGER OF CONVERSE & CO., MANUFACTURERS OF TEXTILES, ETC.

Mr. DOWNES. My regular work is export manager of Converse & Co., of New York, manufacturers of textiles. I am also director of the Argentine Chamber of Commerce, and am down here as chairman of the committee on theft and pilferage, representing the American Manufacturers Export Association, in which capacity I have served since its appointment in June, 1920.

Our position, Mr. Chairman, is a very simple one. We are interested in reducing theft and pilferage—that above everything else. Mr. Campbell said yesterday that this hearing was called to discuss ways and means of reducing theft and pilferage throughout this country, and that is exactly what we are interested in doing.

It is almost a truism to say that the commerce of this country can not go on unless we reduce theft and pilferage. The American Manufacturers Export Association represents, roughly, as of January 1, between 70 and 80 per cent of the exporters of this country. They have made a study of this question of theft and pilferage during the last year and, admitting what was said yesterday, that we can not continue to develop our markets if we are going to let this theft and pilferage go on, I might add that we can not continue to send down assortments nor can we continue to deliver merchandise contrary to the way it is ordered. Besides this, the impression now being created in foreign countries, regarding the honesty of American exporters, is becoming very detrimental to our American trade; and, added to all this, is the trouble and expense of collecting claims and presenting them to the steamship companies, which begins to constitute an overhead that threatens to make it impossible for us at times to compete.

We have gone into this question of theft and pilferage and we find in order to attack it properly in all its phases it would require an outlay of money and cooperation of interests which would not be feasible all at once. We have, however, attempted to do our duty in some small measure by creating a trade protective association which is now attempting to combat some of the evils of this theft and pilferage proposition. But we do know, and I think it must be admitted, that we can concentrate more upon this phase of this theft and pilferage situation and correct some of the faults, as they might be called, in our present economic system of our export trade. And in this category, I would place, first, some such legislation as would place the responsibility on the possessor of the merchandise, where under the present system he is not now responsible. I refer, of course, to the steamship companies. I do not doubt but what the shipowners will tell us, too, that they are exercising due diligence; I can not imagine any better argument. They will probably present facts and figures to show they are spending enormous sums of money to protect merchandise in their possession; but we do know that part of this theft and pilferage, which has been going on, has been due to the negligence of those steamship companies—what proportion we can not tell, and I do not think the steamship companies or owners will deny they have neglected in some instances to exercise that diligence which would be commensurate with the possessor of merchandise and it would hardly seem fair to allow him to contract out of his responsibility. Now, if we can force them equitably and justly to exercise a little more care when they have merchandise, I think it would follow, as a matter of course, that we would thereby get a little more protection and reduce theft and pilferage.

I think we can justly require them to do this by refusing to allow them to contract out of their responsibility. And if, by exercising a little more diligence and care when they have the merchandise, they can reduce this theft and pilferage, it would follow as a matter of course that the premiums for insurance would immediately come down.

Those are the two main objects in which we are interested and, for that reason, at this time, the American Manufacturers and Exporters' Association would be willing to go on record as approving some such legislation or amendment as that which has been suggested, as would seem to have the two objects of reducing theft and pilferage and reducing insurance premiums, which might thereby more practicably and more quickly be obtained.

Mr. KIRKPATRICK. Right in line with what you made as your first proposition, it appears one of the other witnesses said there is one line that is taking rather extraordinary precautions. Do you know anything about that?

Mr. DOWNES. No; I am sorry to say I do not.

Mr. KIRKPATRICK. You do not.

Mr. DOWNES. I do not know anything about that particular line. That was the Bull Line.

Mr. KIRKPATRICK. I hope if any of the witnesses do know about that situation we will hear something about it and get a comparison of the results obtained by the Bull Line and the other lines.

Mr. DOWNES. In reply to your question, I would just like to read two paragraphs of a letter I have here. I was trying to be careful to say I thought the steamship owners would deny they had not exercised the care commensurate with their responsibility. I simply want to confirm that by two paragraphs from this letter of a member of the New York association, which says:

> We had for shipment to Sweden 10 car loads of shoes; with a view to facilitating the inland movement of the freight we employed the ——— forwarding company to handle this matter for us, they were to attend to the booking and issuance of bills of lading, etc., which were in turn to be surrendered to our New York office. The shipment was booked with the ——— Steamship Co., and at the last moment they found it so that they were unable to handle our goods; a part of the shipment was then booked with the ——— Co., and the balance with the ——— Co. Due to a technicality, our bank declined to accept bills of lading from ——— Co., and it was then necessary for us to throw all of the shipment to the ——— Co., agents for the ——— Line. After they had agreed to accept our booking and after a large quantity of it had unloaded on their pier, they suddenly decided that unless we would guarantee them against loss by pilferage and theft on their docks and against the thievery of their own employees, they would not handle the shipment and, as we had only a few hours left in order to avail ourselves of the letter of credit which was about to expire, we, of course, did the natural thing and issued the guaranty.
>
> We then put on the docks our own private watchmen and guarded the merchandise as best we could under the circumstances. However, there was quite a quantity of shoes stolen. One longshoreman was caught leaving the pier with two pairs of shoes which were recovered by our watchmen. The injustice of the situation has made an indelible impression upon the writer—that we, a company in St. Louis—should be asked to give a guaranty to the steamship company who had contracted to haul our freight, while the goods were on their pier is, to us, a most unusual situation and one that should not be countenanced a moment by the exporters of this country.

Mr. LEHLBACH. Mr. Downes, you said that the steamship companies ought not to be allowed to contract out of their just liability or responsibility. What have you to say from the standpoint of the exporter, as to the freedom that he has to negotiate and contract with steamship owners with regard to the terms of shipping?

Mr. DOWNES. If I gather correctly the implication in your question, you would like to know why we do not exercise the prerogative of contracting under what conditions we shall ship. You can readily understand while this would be a very good suggestion, theoretically,

when you come to try it on the steamship company, if you were to fight with them on the phrases in their bills of lading, it would make an impossible situation on the shipping department. It would make it impossible for them to carry on any discussion of rates with the steamship company to make objections to phrases in bills of lading, and, frankly, there are many of us who are managers who have never read a bill of lading through.

Mr. CAMPBELL. Would the chairman ask this question?

Mr. LEHLBACH. Suppose you ask it, if the witness will yield.

Mr. CAMPBELL. What practical suggestion has your association to make as to an increase in the care the shipowner can exercise? You say you represent an association that has studied this question, and are chairman of their committee; what practical suggestion can you make to the shipowner as to an increase in the care, laying aside the question of making him pay?

Mr. DOWNES. Making him pay how?

Mr. CAMPBELL. Pay the loss.

Mr. DOWNES. Oh, you mean make him liable for it. Mr. Chairman, if that question were asked me as chairman of this committee, I would say that I could draw up a complete brief on that point if I were given a few hours to get in consultation with the various members of my committee, who are entirely familiar with steamship company conditions. I am not entirely familiar with steamship conditions, with the routine of the various docks, and I would hesitate to make suggestions which I thought might not be entirely adequate. But I would be very glad to draw up for Mr. Campbell, if he desires, pertinent suggestions on that situation.

Mr. CAMPBELL. You come here criticizing the shipowners; I suppose of your own knowledge. I would like you to give to this committee, if you can, your practical suggestions.

Mr. LEHLBACH. He just stated he was not in a position to do so, and what is the use of repeating a question which the witness has stated his inability, offhand, to comply with?

Mr. CAMPBELL. I did not understand he went that far; he said he would go back and consult with the other members of his committee.

Mr. DOWNES. I would be glad to do that, if you would like to have a written résumé of the suggestions.

Mr. CAMPBELL. I would be glad to have you submit that to the committee.

Mr. DOWNES. I should be very glad to do so.

Mr. LEHLBACH. We would be glad to receive it and incorporate it in the record.

Mr. MCCOMB. Mr. Chairman, I have here a bill of lading which I had sent me from Australia, which gives the bill of lading under the Australian shipping act. They have a water-carriage act.

Mr. LEHLBACH. We will receive that.

Mr. MCCOMB. I have here, also, bills of lading from Canada in accordance with the Canadian act; I have here an English bill of lading of the Cunard Line, which I believe is in transatlantic service running between here and England. I also have here a New York Central through railroad and steamship bill of lading. If they are of any use to the committee I would be glad to give them to you.

Mr. LEHLBACH. The committee appreciates your supplying it with these documents.

Do you desire to ask any further questions, Mr. Campbell?

Mr. CAMPBELL. No; that is all I wanted to ask.

(The bills of lading furnished by Mr. McComb were filed with the committee.)

(The following letters were later supplied by Mr. Downes and are here printed in full, as follows:)

CONVERSE & CO.,
New York, July 25, 1921.

HON. F. R. LEHLBACH,
House of Representatives, Washington, D. C.

DEAR SIR: I am inclosing you copy of letter I sent to Mr. Campbell, in response to his request.

Very respectfully, yours,

E. H. DOWNES,
Chairman of Committee on Theft and Pilferage, representing American Manufacturers Export Association.

CONVERSE & CO., *New York, July 25, 1921.*

MR. IRA A. CAMPBELL,
27 William Street, New York, N. Y.

MY DEAR MR. CAMPBELL: In the course of the hearing you asked me if my association had ever actually put through the prosecution of any cases of theft and pilferage. I told you at that time I would be very glad to find out and let you know, although I doubted whether the organization, as such, could very well embark upon such a course without a great deal of red tape.

I am advised by the association that they have never carried through the prosecution of any cases, but that they have aided in securing information, and bringing their influence to bear with their individual members, who have of their own accord followed up their own cases.

Yours, very truly,

E. H. DOWNES,
Chairman of Committee Representing American Manufacturers' Export Association.

CONVERSE & CO., *New York, July 26, 1921.*

HON. F. R. LEHLBACH,
House of Representatives, Washington, D. C.

DEAR SIR: Referring to my recent letter of July 21, I am inclosing you copy of list of suggestions which I sent to Mr. Campbell. You may recall he asked me for these during my testimony, and I told him I would send them to him in writing, to be incorporated in the minutes.

Very respectfully,

E. H. DOWNES,
Chairman of Committee on Theft and Pilferage Representing American Manufacturers' Export Association.

SUGGESTIONS FOR STEAMSHIP COMPANIES.

Small valuable articles as watches should be kept in a strongroom or something similar on the boat. This was formerly done, but has recently been discontinued. The Ingersoll Watch Co. would be willing to pay a moderate additional charge for such accommodation.

The trouble does not always rest with the type of employees. Checkers and watchmen are repeatedly found to be in league with the thieves, and in this particular respect marked improvement can be made if men of a higher moral standing are engaged in these supervisory positions.

Sufficient watchmen to be placed on lighters and boats if the cargo is aboard or alongside pier at night.

Misdescription of articles to be shipped should be discontinued. Some shippers do this with a view to securing lower freight rates. This practice does not allow the transportation companies to take necessary precautions consistent with the class of freight shipped, as additional protection is afforded special cargo freight to insure against being tampered with while in steamship companies' possession.

Booking of shipments in excess of capacity should not be permitted.

To reject any package showing bad or insufficient packing. They would issue regulations as to classification of packing, according to class of merchandise.

To go the limit in regard to references and investigations of their employees.

To employ more checkers so as to avoid delay in discharge and unloading on piers.

To forbid selling merchandise from docks.

To place enough watchmen on their lighters and boats to exercise strict supervision of cargoes on piers.

To notify the shipper (not the truckman) at once when any package arrives to the pier in a damaged condition.

To establish responsibility of the captains.

To have strongrooms on the boats.

To reject packages containing risky merchandise (silks, gloves, shoes, perfumery, etc.) when the contents are marked upon the package.

To distribute the receiving and delivering sections in the piers so that only a given number of trucks at a time deliver or receive cargo.

To offer bonuses to their employees for the discovery and apprehension of robbers.

To communicate to trucking companies, lighterage concerns, steamship companies, railroad companies, stevedores, etc., the name and description (picture if possible) of any laborer or employee who may have been caught stealing, damaging, or helping to steal or damage packages.

To employ only very capable stevedores and, of course, well known as honest and reliable.

Not to let any case go without immediate prosecution.

STATEMENT OF MR. A. B. GRIFFITHS, NEW YORK, N. Y., REPRESENTING THE ASSOCIATION OF COTTON TEXTILE MERCHANTS OF NEW YORK.

Mr. GRIFFITHS. I represent the Association of Cotton Textile Merchants, of New York. This association is composed of the leading selling houses of the large cotton textile mills of this country. We are fighting hard to hold our present export business and to increase it. This we can not do unless some steps are taken to curtail theft, pilferage, and nondelivery. We are competing with the old established exporting nations, and it is absolutely essential that our merchandise arrive at ultimate destination in good condition; otherwise, the time and expense of securing the order is lost and probably the customer.

Insurance to date has kept us from actual financial loss, as far as the value of the merchandise is concerned, but it does not recompense us for the lost opportunity for expanding our export business. Recently, we have even lost the security heretofore offered through insurance, as a majority of the underwriters have recently attached a new clause in their policies covering theft and pilferage. This clause was due, according to the underwriters, to the enormous losses they have suffered, which make it impossible to continue insurance on the old basis. This new clause states that the insurance company will only pay 75 per cent of any loss, thus making the shipper coinsurer up to 25 per cent. This puts a burden on us which we can not stand and continue in the export business. We are not in the insurance business; neither are we shipowners; we are only

people from whom the shipowners and insurance companies get their living. We pay the freight: we pay the insurance premiums, and for it we do not get the protection we pay for.

We hold no brief for the insurance companies, but it appears logical that the insurance companies, who at no time have physical control of the merchandise, are not in a position to curb these theft, pilferage, and nondelivery losses; and we believe the proposed amendment to the Harter Act, as submitted by the Trade Protective Association, would place the responsibility where it belongs—on the companies who actually have control of the merchandise and who must be given an incentive to stop these losses before they will take the drastic steps necessary toward improving present methods of handling and watching freight in their possession.

Passing the responsibility to the shipowner, where we think it belongs, is only the first step; but it is the most important. After that has been accomplished by legislation, cooperative methods can be used to stop actual thefts; but until the shipowners are forced to become vitally interested in the merchandise, little can be accomplished.

Mr. LEHLBACH. Mr. Griffiths, do your people find that in certain circumstances it is impossible to insure against loss by theft or pilferage?

Mr. GRIFFITHS. Yes, sir.

Mr. LEHLBACH. For certain classes of shipments to certain markets?

Mr. GRIFFITHS. They have different rates, of course. Hosiery and underclothing carry heavier rates, because the thieves seem to be able to spot hosiery and underclothing.

Mr. LEHLBACH. Has the condition reached the point where insurance companies have absolutely refused to insure?

Mr. GRIFFITHS. Not refused, but refused as it relates to 100 per cent cover. We can only insure now 75 per cent and 25 per cent then becomes a burden on the shipper that we can not cover.

Mr. CAMPBELL. May I ask this other gentlemen one more question. I would like to know whether or not they have attempted prosecutions for theft and pilferage in the New York courts?

Mr. DOWNES. If who has?

Mr. CAMPBELL. If your association has?

Mr. DOWNES. Not to my knowledge.

Mr. CAMPBELL. Do you know of any case where they have been able successfully to prosecute in the courts a theft and pilferage case?

Mr. DOWNES. My impression is they have not; but I can possibly verify it and enter the answer in the record, if I may.

STATEMENT OF MR. P. L. GUITERMAN, NEW YORK, N. Y., REPRESENTING THE AMERICAN EXPORTERS AND IMPORTERS' ASSOCIATION OF NEW YORK.

Mr. GUITERMAN. I am here representing the American Exporters and Importers' Association of New York. I am a member of a firm of exporters and other export associations, but I am here immediately representing the American Exporters and Importers'

Association, on whose pilferage and theft committee I have been since it was formed about a year ago, I think.

The Exporters and Importers' Association counts among its members most of the leading export and import merchants of New York. I have brought with me a list of our members that you may, if it please you, insert in your record.

(The list referred to above is as follows:)

LIST OF MEMBERS.

ACTIVE.

American Trading Co., 25 Broad Street.
Amsinck, G., & Co. (Inc.), 96 Wall Street.
Arkell & Douglas (Inc.), 44 Whitehall Street.
Balfour, Williamson & Co., 43 Exchange Place.
Bencoe Exporting & Importing Co., 82 Wall Street.
Bowring & Co., 17 Battery Place.
Bush, Beach & Gent (Inc.), 80 Maiden Lane.
Camacho, Roldan & Van Sickel, 56 Pine Street.
Cameron, R. W., & Co., 23 South William Street.
Castillo, Rafael del, & Co., 14 Beaver Street.
Cowdrey & Winkhaus, 17 Battery Place.
Darrell, E. F., & Co., 11 Broadway.
Dodge & Seymour (Ltd.), 193 West Street.
Douglas & Evans (Inc.), 45 John Street.
Duncan, Fox & Co. (Inc.), 42 Broadway.
Dunn, John, Son & Co., 44 Whitehall Street.
Dutilh-Smith, McMillan Co. (Inc.), The, 50 Broad Street.
Echavarria, R., & Co., 82 Broad Street.
Frame, Leaycraft & Co., 64 Wall Street.
Frazar & Co., 30 Church Street.
Freeman, R. B., & Co., 140 Nassau Street.
Gaston, Williams & Wigmore (Inc.), 100 West Forty-first Street.
General Com. Co. (Ltd.) of United States, The, 295 Broadway.
Gibbs, Anthony & Co. (Inc.), 61 Broadway.
Goldsmith & Co. (Inc.), 116 Broad Street.
Grace, W. R., & Co., 7 Hanover Square.
Graham, Hinkley & Co., 135 Front Street.
Guiterman, Rosenfeld & Co., 35 South William Street.
Hagemeyer Trading Co. (Inc.), 17 Battery Place.
Halle-Perris Trading Corporation, 29 Broadway.
Hartmann Pacific Co. (Inc.), 80 Wall Street.
Hawes & Co., Williard (Inc.), Seventh Street and East River.
David S. Hays and John L. Denton, 24 State Street.
Henry, H. S., & Son, 21 State Street.
Holsam & Co. (Inc.), 25 Park Place.
Hudson Trading Co., 18 East Forty-first Street.
Huth, Gillespie & Co. (Inc.), 135 Front Street.
Kemsley, Millbourn & Co. (Ltd.), 90 West Street.
Knox, Wm. H., & Co. (Inc.), 18 Old Slip.
Kunhardt & Co. (Inc.), 17 Battery Place.
Lamborn & Co., 132 Front Street.
Lascelles, A. S., & Co. (Inc.), 10 Bridge Street.
McFadden, George H., & Bro., 25 Broad Street.
McGovern, Thomas B., jr., & Co., 132 William Street.
Mailler & Quereau, 31 Stone Street.
Markt & Hammacher Co., 194 West Street.
Markt & Schaefer Co., 193 West Street.
Medina, J. A., Co., 30 Broad Street.
Melchior, Armstrong & Dessau (Inc.), 116 Broad Street.
Muller, Maclean & Co. (Inc.), 11 Broadway.
Nafra Co. (Inc.), The, 120 Broadway.
National Paper & Type Co., 32 Burling Slip.
Neuss, Hesslein & Co. (Inc.), 43 White Street.

Pan-American Trading Co., 490 Broome Street.
Parsons Trading Co., 17 Battery Place.
Peabody, Henry W., & Co. (Inc.), 17 State Street.
Peck, William E., & Co. (Inc.), 140 Front Street.
Pike, H. H., & Co. (Inc.), 108 Water Street.
Richardson, Orr & Co., 21 State Street.
Rosco Trading Co. (Inc.), 66 Leonard Street.
Sherman & Sons Co., 381 Fourth Avenue.
Smith, Kirkpatrick & Co. (Inc.), 10 Bridge Street.
Smith & Schipper, 91 Wall Street.
Strong & Trowbridge Co., 17 Battery Place.
Thomsen & Co., 90 Wall Street.
Toledano Exporting Co., 18 Broadway.
Watts Co., Charles H. (Inc.), 25 Whitehall Street.
White Co., Park J., 17 Battery Place.
Wills, George, & Sons (Ltd.), 206 Broadway.
Winter, Ross & Co., 50 Broad Street.
Wonham, Bates & Goode Trading Corporation, 17 Battery Place.

ASSOCIATE.

American Exchange National Bank, 128 Broadway.
American Steel Export Co., 233 Broadway.
Bank of New York, N. B. A., 48 Wall Street.
Corn Exchange Bank, 13 William Street.
The Equitable Trust Co. of New York, 37 Wall Street.
General Motors Export Co., 120 West Forty-second Street.
Guaranty Trust Co. of New York, 140 Broadway.
Irving National Bank, Woolworth Building.
The National City Bank of New York, 55 Wall Street.
National Park Bank, 214 Broadway.
The National Bank of South Africa (Ltd.), 10 Wall Street.
The Standard Bank of South Africa (Ltd.), 68 Wall Street.
United States Steel Products Co., 30 Church Street.
All the above addresses are in New York City.

It has been roughly estimated, according to information given me last week by the president of our association, that the turnover of exports and imports of the association's members amounted, in 1920, to something like $1,500,000,000, in every kind of article and product. I merely mention this fact to prove the importance of the body that I have the honor to represent here and its genuine interest in the foreign business of this country.

Before I go to the principal subject matter, I would just like to say that I would indorse the suggestions and remarks made yesterday afternoon by Mr. McGee. He covered a great deal of ground that it will therefore not be necessary for me to cover, in regard to the effect on the trade of the present situation. I would like to indorse those remarks.

It is well known to your honorable committee that the theft and pilferage nuisance has, in the past year or two, assumed alarming proportions and has actually reached a stage where it is causing a great and lasting injury to the international business of the United States and is, at the present time, all important because of the great economic loss and waste to exporting merchants and every exporting interest in this country—manufacturers, farmers; everyone that has anything to do with the exporting of goods, have a very direct stake in this matter.

It can not be dismissed by the stock answer of the steamship companies that the merchants are all right—they can cover by insuring. Even if all the risks could be covered by insurance, which as we are

all aware is now far from being the case, the merchants would be by no means all right. Insurance companies simply base their premiums on the risk covered, and when the risk covered is high the premium is correspondingly high, and this premium is simply paid by the merchants; or, to be more exact, is added on to the cost of the goods and thus makes the American goods that much dearer in competition with the goods of the rest of the world.

I would like to point out here an instance of making American goods dearer in competition with those of the rest of the world. We not only have the competition of European goods, we will say, in the South American or far eastern markets, where our competitors also have to add on the high insurance, because they are confronted with something like the same situation we are, but if we are selling any goods that would compete with goods made in England, France, and so forth, and those goods do not have this question confronting them at all; do not have this high insurance—in other words, if we want to sell, I will say, hosiery, because that is what my particular firm does, in England, we are in competition with Birmingham, and Birmingham has not any theft insurance to charge up in the price of their hosiery, because she delivers her stuff by rail to anywhere in England. So that we are in competition here with local manufacturers all over the world, as well as export goods of all great European nations. I think that is an important point that has not been brought out, and I would like to lay stress on it.

Our association has given considerable study to this matter, and, with your kind consideration, I will describe some of the phases of the situation and offer, on behalf of the association, some suggestions for a cure. The committee was kind enough to write our association a letter and ask for such suggestions; therefore, I trust it will be in order for us to make suggestions.

It is our belief that the largest single cause—I know Mr. Campbell will want to ask me a question on this, and I want to say it is our belief; I have not the proof—it is our belief that the largest single cause for the claims on account of theft and pilferage in connection with American export cargo is the fact that the ocean carriers have for the last two or three years been able so to word their bills of lading as to relieve them of all responsibility, and the courts, in construing the Harter Act, have upheld them in this respect. Consequently it is not necessary for them to care whether goods are lost or not lost, and it actually puts a premium on nondelivery. I am not saying that I make the charge that good and reliable steamship companies, of which there are many, do not care whether goods are lost or not. I am not making that statement; I am simply saying that according to the law and their liability under the law it is not necessary for them to take due precautions, and in human nature, therefore, it is likely to happen that many of them will not take due precautions. I am not making any accusation against the steamship companies generally, or saying that they take no care at all; that is much too broad a statement; but under the limited liability clause—this $100 clause—there is an opportunity for the best of the ocean carriers and a temptation for them to take little or no interest and to do nothing to prevent theft and pilferage, while the dishonest carrier, or the dishonest employees of the carrier (and there are such, particularly with a number of the new concerns that have gone

into business in the last few years), may itself steal and pilfer, short delivering the goods of any value, and only paying the consignee $100 per package.

It is the opinion of our association that new legislation is necessary to place upon the carriers the responsibility that we believe was originally intended to be placed upon them by the Harter Act, but which has since been so much lightened by court decision. While they have custody of the goods, it is logical that they should be compelled to give due care to their safekeeping and have full responsibility in the case of default.

I would like, with the committee's permission, to illustrate with a couple of examples the sort of thing that actually happens.

The members of our association, who are all exporters, have all of them had dozens and scores and even hundreds of non-delivery and pilferage losses in the last few years. I have not collected the many details from the different companies; I only know that on Thursday afternoon last this committee had a meeting. But I could give a couple of instances in our own business, which I am sure would find many parallels in all the others. One is a large case and the other small, but I think they both illustrate and, with your permission, I won't mention names of the particular steamship companies in those cases. They were both very good concerns and it was nothing particularly against them; but under the law they are not responsible and, therefore, why should they be responsible? Really, the names of the steamship companies do not matter at all.

In one case we shipped on several steamers about $45,000 worth of hosiery. They both happened to be hosiery cases. We shipped about $45,000 worth of hosiery to Genoa. The pilferage claims, when they came in, amounted to $10,000 out of $45,000—pilferage; nothing else. Those cases were in perfect condition when they were handed to the company in New York. Our cases have been approved by the underwriters and all that sort of thing. We do not know whether the theft occurred on the dock in New York or on the steamer, or on the lighters in Genoa. It did not occur at Genoa, because they were surveyed at Genoa; but the point is that nobody was responsible. The insurance company paid, but nobody was responsible at all. In my humble opinion, if the law were amended, if there were a proper law on the subject, it would have been demonstrated there that the steamship company was responsible, because they did not deliver the goods in good condition to the lighterage people in Genoa; or that the lighterage people were responsible because they did not turn over the goods in good condition to the next carrier, whoever it was.

I think it was the customhouse there that established the survey, but nobody was responsible at all. There was no claim on anybody, although our customer made a claim on the steamship company, because we corresponded with them for about a year, but nothing will ever come of it. I think that was under the $100 clause, and principally under this clause—I do not know what you call it exactly—about the notice of claim, which I will come to later. The notice of claim has to be in such a legal fashion that it never is done right. [Laughter.] Now, there was a $10,000 loss. Certainly, on $45,000 worth of goods, if that carrier is responsible, they are going to see they are not going to lose one-quarter of the shipments. I have no

doubt the people in Genoa did very well in silk stockings for several months, but it does not help American trade. [Laughter.]

The other claim is a very small matter, but it shows what happens sometimes. I was called up one day by a dock in New York and asked whether we had hosiery of a certain brand and I said "Yes." They said, "Will you send somebody up here to identify something?" So we sent a man up to the dock and it seems a Greek cook was seen coming off the dock and looking too fat, and he was examined and they found him all wrapped around with stockings. Then they went to his berth and found it full of them. Now, what happened was this: He had stolen these stockings on the outward voyage. They were goods shipped by us to a certain port abroad. He had stolen them on the outward voyage and he had meant to take them off at the foreign port, but apparently could not get off the dock while there. So he left them in his berth and intended to take them off in New York when he got back. Now this particular Greek cook was sent to prison for a year in New York. They said it was his first offense—and he had not been over here long enough to have a second—but he was sent up for a year, anyway. [Laughter.]

The point is the loss was there. When that case arrived on the other side, our people on the other side made a claim on the insurance company. The insurance company paid. They probably made claim on the steamship company, but as to that I am not certain. I do not want to say positively there was no claim on the steamship company, but the chances are 10 to 1 there was not. The point is that that theft absolutely occurred on the steamer: it was the only place it could have occurred—the man had the stuff on his person and in his berth. As I say, the claim may have been made, but I have no doubt it was not made in the correct legal form when the stuff arrived on the other side. It never is and can not be; I do not see how it can be.

Coming back to the question of insurance, the situation with which the exporting manufacturers and merchants in this country are confronted is this: Because of the immense amount of pilferage and the fact that the insurance companies find it very difficult, if not impossible, to hold the steamship companies responsible for their losses, they, the insurance companies, have taken an entirely new attitude and divide their pilferage into three classes. One, no insurance at all, at any rate. For instance, I am informed—I do not ship there myself, but I am informed by other members of our association, and I would like the insurance people to tell me if I am wrong—that we can not insure goods for theft and pilferage to the west coast of South America at any price.

Mr. McCOMB. It can be procured. Several companies here say they do not do it, but one says it can be procured. You might say it is almost prohibitive, if not entirely so.

Mr. RUSH. I would like to say we got our rates up to 8 per cent and then decided it was better to quit.

Mr. HILL. Our rates are up, sir, to 11 per cent to the west coast of South America, which is more than the profit on the goods.

Mr. GUITERMAN. My firm did have one exceptional shipment the other day to Puerto King, Strait of Magellan, and they quoted 15 per cent. We were doing that for a London house. We cabled them and I do not know what they did; but we did inquire and the insur-

ance company here wanted 15 per cent to insure those goods against the risk to Strait of Magellan. Now, that is not insurance.

Then about the 75 per cent insurance. That has been spoken of by other witnesses. It means the company will only insure 75 per cent and the shipper has to insure the other 25 per cent.

Now, to the places where we can insure we have to pay a huge advance. If I remember, before the war we used to pay to England, covering war risk, about one-sixth of 1 per cent for miscellaneous merchandise—about one-sixth of 1 per cent covering all risks, including pilferage. The rates to England now, I suppose, on stuff like hosiery and stuff that is readily stolen, are up to 2 per cent—from 1½ to 2½ per cent. That is about 1,500 per cent advance, roughly, on that sort of stuff. And on general merchandise, which is not so readily stolen, I think the rates are about three-eighths or one-half of 1 per cent. But anyway, on stuff like hosiery, underwear, and gloves, and all those things that are easily stolen, the rates have gone up about 1,500 per cent, even to England, which I think is the country where the rates have gone up least, because there is not so much trouble on the other side, as they have better management.

Mr. EDMONDS. I can see where the game of tumble top originated: I think it must have come right from the bill of lading—take one: put two; all put. [Laughter.] That is where the insurance companies came in and put the rate up.

Mr. GUITERMAN. Now the customer abroad—I speak entirely from the American merchant's point of view—who buys goods, wants to receive the goods he bought; and if he does not receive them nothing on earth will make him pay for them. I am hitting here at this 75-per-cent clause. It is all very fine when you insure 75 per cent and tell your customer that is all you can secure: but the customer says, "Thank you very much; but I have lost the goods and I do not care what the American insurance companies say they will pay on a loss; let them give me the 75 per cent and give me the other 25 per cent." You could not persuade your customers that is the only way they can buy goods; they have bought them and they want to receive them, and it is up to you to deliver them. If you raise too much fuss about it and try to make them pay the 25 per cent, they will say, "Don't talk to us any more." Therefore, if the exporters here can not insure against theft and pilferage and nondelivery, they must simply stop business, as they can not possibly add enough profit to their goods and still compete with foreign goods, to provide for the total known ratio of uninsurable loss. It can not be done; you could not sell your goods if you tried to.

I would like to mention here that our agent in Switzerland—I am sorry I did not bring the letter—about a year ago our selling agent for stuff in the wearing apparel line could not get any more orders; the people were not going to buy anything more from America, because the stuff was so pilfered, and he could not get any more orders. If, however, the steamship companies are made to bear their proper responsibility for losses occurring while the goods are in their care, they will, in our opinion, quickly take the precautions that they always should have taken, thus avoiding a great deal of the economic loss that now exists, and the insurance companies will again insure, at reasonable rates, to cover against risks to goods while not in the hands of the steamship companies; in other

words, while they are in the hands of the truckman on this side or after they have left the custody of the steamship company on the other side.

It is a relatively simple matter; it is not nearly as difficult as some people say. When you deliver goods to the steamship company, if they are in good condition, they give you a receipt "received in apparent good order and condition." Now, they are very careful and rightly so. No steamship company will accept goods in secondhand cases, even though they are very good cases, without putting on the bill of lading a clause "secondhand cases," or something of that sort, so that the bill of lading is clear; or if the goods are recoopered, they will put on the bill of lading, "cases recoopered." That is all right. Now, when they deliver them at the other side, all we ask is that they get a receipt in the same condition as the receipt they gave; or, if they do not, that they are responsible for the difference; in other words, for what has happened on the voyage. If the steamship company receives five cases from John Jones in apparent good order and condition, and when those cases arrive in Liverpool they show signs of being broken into, and the custom-house, or whoever it is, then gets a receipt "received five cases from carriers, three cases apparently broached on voyage," then we maintain that should be notice of claim and legal notice coming to the steamship company. There are no lawyers down on the docks to make out a claim in legal form, and that could come later; but the steamship company should be liable for what happened to those three cases while in their possession. We do not maintain the ocean carrier shall be responsible for everything that happens from the time the goods leave Chicago until they get to some place in the interior of China, or anything like that; but just that every carrier shall be responsible for the goods while in that carrier's possession. No one else can be responsible; no one else can watch them.

Now, I would like, if I may—there were to have been two members of our association to attend this hearing, but the other member could not come—and if I may, I would like to read a not very long report from the insurance department of W. R. Grace & Co. to Mr. Fowler, which Mr. Fowler has just sent to me. I think it brings up some points that have not been brought out, which are rather important:

THEFT, PILFERAGE, AND NONDELIVERY.

JULY 15, 1921.

Memorandum for Mr. Fowler:

The extraordinary increase in losses due to the above causes during the past three years has caused a situation which seriously affects our export trade and a strong factor is unquestionably due to the merchandise being insufficiently safeguarded while in custody of steamship companies, not only on the pier, but also during the voyage and while in course of discharge. As far back as 1918 we noted the increasing number and value of claims, and on one occasion corresponded with Lloyd's agent at a Brazilian port asking specific details in regard to a certain claim and also requested his suggestions tending to show how the losses occurred. The reply dealt very frankly with the situation, and in this agent's opinion wholesale pilferage was carried on during discharge due to insufficient supervision on the vessels, and it is stated that American vessels were especially lax in this respect, which fact was proved by the eagerness displayed on the part of all longshoremen to assist in discharging American vessels.

There can be no doubt that if the steamship companies were held liable for a greater value that they would take summary steps to safeguard shipments

while in their care, for at the present time their limitation of liability is so small in comparison to the value of the merchandise that they apparently do not consider the extra expense in supervising on the pier or while on the voyage would be justified. It is a practice of practically all steamship agents at foreign ports to deny liability of any kind, and although we have for years demanded that consignees file claim against the carrier, the inevitable reply is that the steamship companies never acknowledge claims and that it is a waste of time to make any attempts at recovery. We have, however, insisted that this course must be followed, and practically all our branch offices and clients now make formal claim in writing whenever merchandise arrives damaged or short, so that underwriters may take what steps they consider necessary to enforce the carrier to admit their responsibility.

In former times it was sometimes possible to collect full value of any shortage up to the amount of the steamship company's liability (usually $100), but of late years the tendency has been for steamship companies in event that they can not escape admitting liability to only respond for such percentage of the $100 limit as is represented by the shortage compared with the full value of the package. For example, a case of silk hosiery containing 200 dozen pairs of stockings valued at $2,000 and robbed to the extent of 5 dozen pairs, or one-fortieth of the total, would only be admitted as one-fortieth of their liability of $100. The result: Payment is offered in the sum of $2.50, which, of course, is not worth considering. Carriers should unquestionably be made responsible for a greater value than $100 per package, and further they should accept 100 per cent of all claims up to their full legal liability, and claims should not be governed by a percentage of the value. I consider this point as most important; otherwise, if they are permitted to settle on a percentage basis, the increase of their liability would have very little effect in event of pilferage of part contents.

From our own records the losses due to theft have increased enormously since 1916, and on checking up our figures we find the following ratio of losses compared to premium: 1916, 25 per cent of premiums; 1917, 70 per cent of premiums; 1918, 250 per cent of premiums; 1919, 200 per cent of premiums; 1920, 125 per cent of premiums.

It will be noted that there was a distinct drop in the ratio of losses in 1920, but this is undoubtedly due to the cumulative results of educating consignees into prompt clearance of merchandise, strict examination of packing at this end, supervision and rechecking before delivery to the truckmen and after the delivery to the pier. We took extraordinary measures in the latter part of 1919 and 1920, with result that our percentage of losses was reduced, and I think it safe to say that the steps taken are limiting a large percentage of losses which occurred prior to delivery to steamer, but, of course, we could not follow the merchandise after the steamship company had receipted for same. Therefore, losses which were afterwards certified to on arrival must have occurred while in the custody of the carrier.

It might be well to mention here that the firm of W. R. Grace & Co. is in a position to take precautions and steps that smaller concerns can not always take; in other words, their volume of business is so enormous that they can follow goods up where a smaller concern would not be able to do so. Lots of our members, I can say, employ men to watch goods up to a certain point, but everybody can not do that—particularly people who are out of New York, as a great many shippers are.

To continue reading:

Prior to 1916 the rates to South American ports varied from one-half to one-fourth per cent, with the exception of certain ports where the rate was as high as 1 per cent, but now it is difficult to insure at any rate of premium, and where such coverage can be obtained the premium charge amounts to from 5 to 10 per cent, which, of course, increases the costs to the consignee of American merchandise very seriously. Before the war rates to Europe varied from one-tenth to one-fourth per cent, and in this area the rates have also increased enormously, varying from 2 to 10 per cent.

I won't read the rest of this. It is in line with what we have been hearing.

The only other point is—and it is a very good point—that shippers should be more careful in using trucking firms that have an unfortunate loss record, and great care should be exercised that truckmen deliver to the pier on the same day.

Mr. CAMPBELL. Will you read that part of the record? I am anxious to hear what he has to say about it.

Mr. GUITERMAN. I am reading that part:

* * * Great care should be exercised that truckmen deliver to the pier on the same day the goods were picked up at the railroad or warehouse. Under no circumstances should valuable merchandise be left in the custody of truckmen overnight.

Surely that is where a great many losses happen, but that is before they get to the steamship company, and there are a great many such losses by the employment of truckmen without sufficient responsibility, or perhaps with plenty of financial responsibility, but some of them have a business on the side.

Mr. FREE. May I ask you one question?

Mr. GUITERMAN. Certainly.

Mr. FREE. In employing these truckmen do you make any attempt to make the concern responsible and to check the goods from the time they leave your warehouse until they get down to the pier?

Mr. GUITERMAN. I suppose every concern has its own system. We do. Our own firm employs a responsible firm of truckmen, who are absolutely responsible if they lose a case; and if they lose a case we simply make a claim on them and they pay for it.

Mr. FREE. Do they ever pay?

Mr. GUITERMAN. Yes; because they are very responsible people that do that. There are a great many concerns, particularly concerns not familiar with export business, who employ truckmen, and they do not know who they are.

Mr. FREE. Then your trucking arrangements have been quite satisfactory?

Mr. GUITERMAN. Yes; I would say our own have been very satisfactory.

Mr. FREE. Then your losses have occurred after the goods have been delivered on the dock?

Mr. GUITERMAN. Our own have; yes.

Mr. FREE. Have you any means of knowing whether the trouble occurs, then, while the goods are being put on the ship or afterwards?

Mr. GUITERMAN. When they are once on the dock we can not follow them at all.

Mr. FREE. Then a large part of this trouble, so far as you are concerned, occurs after the goods reach the dock?

Mr. GUITERMAN. All of ours. We are in New York and we send the stuff right from our own warehouse to the steamer; we get the stuff ourselves to the steamer in good condition. But that is not the case with a lot of concerns who ship from the interior.

Mr. FREE. Have the steamship companies any means of controlling the stevedores, outside of simply putting on watchmen?

Mr. GUITERMAN. I am not familiar with what the steamship company's arrangement is with the stevedores; but I should think it would be possible for the steamship companies to control their own servants—I should think so. They are not employed by the shipper.

They must be employed by them; they are paid by the steamship company. The rate of freight includes loading and stevedoring onto the steamer.

Mr. EDMONDS. The lighterage man in New York is employed by the railroad companies, usually, is he not?

Mr. GUITERMAN. Yes; in full carloads. The shipper loads the cars and the railroad company delivers on the lighter to the steamer.

Mr. EDMONDS. And any loss there would belong to the railroad, because they agree to deliver alongside?

Mr. GUITERMAN. Yes; they are in the position of a trucking company for the railroad.

Mr. EDMONDS. Now, does the railroad company accept liability to alongside the ship under the railroad act?

Mr. GUITERMAN. I do not know anything about that act, for the reason I never had any question of that sort. If we order a carload to the steamer the railroad company gives us a receipt, and there is never any question of evading responsibility. Perhaps some one else could answer that question better. I have never had occasion to inquire into the legal position of the railroad company.

Mr. KIRKPATRICK. Do you find any difficulty in getting cooperation from the steamship lines in fixing the responsibility, where there is some chance of fixing it on some one else? Say there is some question as to whether the liability belongs to the steamship company or to the lighterage company, or to the trucking firm. Do you find that the steamship company is indifferent about giving information—do you find difficulty about getting information you want?

Mr. GUITERMAN. That is a very hard question to answer, because in my own particular business it is entirely export and the merchant loads at the other end, and all we hear is that they can not do anything with the steamship company—that they can not get any redress. I mean we do not have to handle that; we always deal with the steamship company's representative at the foreign port. It is c. i. f. or f. o. b., whichever it is.

Mr. KIRKPATRICK. It seems to me that would be another phase of the question. By imposing any additional liability on the steamship company, if they were liable it would be a very strong incentive for them to produce proof that some one else was liable, if they had that proof in their possession.

Mr. GUITERMAN. The indications we have from various correspondence from various companies abroad is that the steamship companies mostly rest on their freedom from liability and do not trouble about that. That is the indications we have: it is not in our own personal experience, because we do not handle it ourselves. And again, I want to say there are good steamship companies and bad steamship companies, and some of the steamship people, the older lines, the better established lines that have been running for a great many years, do handle these things in many instances differently from some of the others; and also I suppose in countries where they have more control it is not so difficult. But, naturally, when it comes to liability, if there is no liability by law they are not going to take on any liability that does not belong to them. That is human nature.

Mr. KIRKPATRICK. And perhaps they are not going to try to put it on somebody else?

Mr. GUITERMAN. That is human nature, too.

Mr. EDMONDS. Let me ask you a question in connection with Mr. Herrick's testimony, I think it was, last night. Is it customary, or does it happen very frequently, that a part of the shipment is sent on one steamer and the balance of the shipment left for another steamer?

Mr. GUITERMAN. That is more in the case of shipment of bulk goods. We ship mostly manufactured goods, and they mostly go on the same steamer. I think Mr. Herrick deals in very large quantities of bulk goods, and perhaps it is a little different with him.

Mr. EDMONDS. I have in mind a shipment that was made to Australia—if I am not mistaken, it was on the Luckenbach Line—in which there was a shipment of machinery. Of course, it was no good without the whole of it going on one steamer—every particular part of the machinery. The man got it and it was absolutely useless to him. After waiting four months, he got the balance of it. Is that customary in steamship companies to do that kind of thing?

Mr. GUITERMAN. We have not had that experience.

Mr. EDMONDS. I am not sure it was the Luckenbach Line: I just remembered the story printed in the Scientific American.

Mr. GUITERMAN. I would say that was exceptional.

Mr. EDMONDS. The steamship bill of lading reads if they can not put it on one steamer they will put it on another.

Mr. GUITERMAN. I have no doubt it does.

Mr. EDMONDS. Do foreign steamers do that, too?

Mr. GUITERMAN. I have not seen the foreign bills of lading, but I think they are about as broad as the American.

Mr. PRICE. That has been our experience for a number of years. We had that experience for a number of years prior to the war, of shipments of flour being divided into parts and going forward by following steamers. The bills of lading provide for that situation by saying "to be forwarded by steamer or following steamers of the line."

Mr. EDMONDS. Is that also done by foreign steamers?

Mr. PRICE. Yes, sir.

Mr. GUITERMAN. I think so. I think they all have that.

Mr. EDMONDS. I understood that Canadian shippers or people shipping in Canadian lines contended that was not so with Canadian lines—that is the reason I am asking the question—that when they book a shipment they take it.

Mr. PRICE. We have the same experience out of Montreal as out of American ports on the same class of traffic.

Mr. EDMONDS. With the English line steamers?

Mr. PRICE. Yes, sir.

Mr. GUITERMAN. There is another point here, which is brought to my attention by one of the members of our association, but I think it has more to do do with the South American business that I am not so familiar with. It is in connection with notice of arrival. In certain bills of lading there is a clause which states that the carrier is not held responsible for giving notice of arrival to consignee, in consequence of which we have had instances of short delivery where more than six months' time elapsed before presenting claim to the

steamship company or to the steamship company's agents. On some bills of lading that is so, that the company has the right to discharge at once and you have no right to make claim after a certain time, and yet they have no obligation to give notice of arrival. That is only the case on some lines; but it does not seem fair and should perhaps be considered in case there is any legislation.

The three principal points wherein, in the opinion of our association, the present law requires amendment, are:

1. Limit of liability.
2. Burden of proof.
3. Notice of claim.

Limit of liability: The steamship companies now are entitled under the law to limit their liability to a certain amount for each package, but do so in their bills of lading in amounts varying from $100 to £200, but mostly in the neighborhood of the smaller amount. I have here a number of bills of lading of various steamship companies. I would like to point out one thing: There is a bill of lading here which has the following clause: "Also steamer not responsible for robbery that can be covered by insurance." [Laughter.]

That sinks in a little. But on most of these bills of lading there is a clause either to the effect that the liability is not to exceed $150 per package, or $100 per package. Here is an Australian bill of lading which is £200 per package, which is a good deal more reasonable. That is a great exception. Another Australian bill of lading is £10 per cubic foot, or £200 per package. These Australian bills of lading are £10 per cubic foot or £200 per package. Here is a French bill of lading, $5 per cubic foot. By Australian bill of lading, I mean New York to Australia. Here is an American line, American-Australian, and the Commonwealth and Dominion. I do not know what bills of lading the American-Australian have, whether English or American. These are both British companies that have the £200 liability.

I have looked through a great many bills of lading and these are the only ones I found that had that £200 liability. These are all about $100 or $150 per package.

The result of this is obvious. It is cheaper to lose a valuable package than to give proper care to its safe-keeping. I think that is a point that we rather want to stress, that it is cheaper to lose a valuable package, under the present law, than to give it proper care.

Now, in regard to the Harter Act. In a general way, we indorse the suggestions of the underwriters, but we have this special problem to consider. The steamship companies will say, "Well, if you want us to take full liability for the package, whatever the value is, you must pay us accordingly," and they will point out, I think, that we already have the right to declare a package at $5,000 or $10,000 if we want to pay accordingly. But here is the point: With all due respect to them, when we declare the value very high, they charge at present an absolutely exorbitant rate of freight—quite out of proportion to the additional care needed. Now, if the steamship companies say, "We do not wish to be unreasonable, but certainly you can not expect us to give special care to a package that is worth $10,000 if you only pay a dollar freight or $2 freight. Pay us more; declare the value, and we will take care of you all right." But we have the $10,000 package. We do not want to pay $100, 1 per cent, we will say, or 2 per cent, $200, to take that across. And it was sug-

gested at a meeting of our members the other day that something might be worked out along these lines—I would rather not give the exact wording for an amendment, but would like to file our association's suggestion before the committee to be studied and to see if anything could be worked out, and that is this, that the liability of the steamship companies be increased to some reasonable amount per package, at its regular rate of freight. The amount might be $500, or it might perhaps vary according to the classification. In other words, $250 or $500 would be a reasonable amount for a package of woolen wear; whereas, for silk, $1,000 might be right, or for silk goods $500, or perhaps an average valuation of from $500 to $1,000 might be nearer.

The committee should study that. But above that, the steamship carrier should still be liable, provided that the shipper declares the value and the steamship company should have the right to charge the shipper, in addition to the regular classification freight rate the cost to the steamship company for its own theft, pilferage, and nondelivery insurance on the excess valuation—the idea being that some steamship companies can insure on their steamers a great many packages to a much better advantage and more reasonably than the shippers can do it individually; that, furthermore, if they do insure it, the insurance companies will more or less insist on their giving proper precautions to the care of the goods in order that they may get a decent rate of insurance. Then the shippers would be paying the classification rate, whatever it is—50 cents a cubic foot, or 75 cents a cubic foot—and, in addition, we will be paying exactly what it costs the steamship company to insure their excess liability. They would not lose anything. If they lose the package, they pay us and they collect from the insurance company.

Now, that is a thought we just arrived at last Thursday in the meeting of the directors of our association, and they thought something might be done along those lines, and we would like to put that before the committee and put it on the basis that it is absolutely fair to the steamship companies as well. There is no hardship to that and the shippers would know where they were.

In regard to notice of claim, the present court ruling, as I understand it, is that a notice is not legal unless it is given before removal of the goods from the dock, and a notation on the receipt is not a legal notice. That, I understand, is not in the Harter Act, but that has been the court's ruling. Now, that is so obviously unfair: it is unnecessary to discuss it; but our association recommends the following as an amendment to the Harter Act:

Notice of all claims for loss or damage, visible from a superficial examination of the merchandise, or of the barrel, box, bale, package, or other container holding the same, shall be given the carrier before removal from the dock or customhouse; but a notation on the receipt given the carrier for any goods or merchandise to the effect that the same was in damaged condition or short, shall be deemed sufficient notice of claim. Notice of all claims for loss, damage, or shortage discoverable only by opening the barrel, box, or other container, shall be given carrier within a reasonable time after delivery of the merchandise to consignee; such reasonable time being determined by the nature of the merchandise transported and the circumstances of each case. No clause shall be inserted in any bill

of lading or shipping document, whereby the time within which suit must be brought against any vessel or carrier subject to the provisions of this act, shall be limited to a period less than one year.

I understand it is six months now, and it does not give sufficient time for a distant nation.

Mr. KIRKPATRICK. At what interstate point along the line of delivery is the receipt given?

Mr. GUITERMAN. You mean on the other side?

Mr. KIRKPATRICK. Yes.

Mr. GUITERMAN. On removal from dock, as a rule.

Mr. KIRKPATRICK. At the time of removal from the dock?

Mr. GUITERMAN. As I understand it; yes. The customs house comes in there, particularly in some of the South American ports; but I think the customhouse has to give that receipt to the steamship company. I think that is the way it is done. That is the way I understand it is done.

There is just one other point, and then I am through. Another amendment which we recommend is this: In the event of loss or damage the burden of proving freedom from negligence shall be upon the vessel and her owner.

The reasons for that have been thoroughly given by other speakers and so I won't go into that.

Mr. CAMPBELL. I should like to know whether you make it a practice to bind your cases containing hosiery with iron straps?

Mr. GUITERMAN. Yes, sir. We use extremely good cases.

Mr. CAMPBELL. In your particular business?

Mr. GUITERMAN. Yes.

Mr. CAMPBELL. Is that customary, however, with all exporters?

Mr. GUITERMAN. The insurance companies lately—I saw these policies—have a clause on their hosiery insurance policies, I think, stating the insurance is void if they are not so properly packed.

Mr. CAMPBELL. That is a recent innovation?

Mr. GUITERMAN. That is recent; yes.

Mr. CAMPBELL. During the period within which these large losses have taken place, in 1919 and 1920, it was not necessary for exporters to put an iron strap on the box, was it?

Mr. GUITERMAN. It was customary; it has been customary for exporters who knew their business for many, many years—for 25 years I have had it, and these shipments I was speaking about, in 1920, they were all thoroughly strapped and excellent cases; I mean to say they were in such shape that the thieves had to have plenty of time to rob them; they could not do it quickly.

Mr. CAMPBELL. In a shipment from a New York warehouse of exporters to South America or Genoa, did you say that it would be practicable for the shipowner to open each case and count the contents to see whether they had received it all or not?

Mr. GUITERMAN. No. I would not ask that; I would not like to do that, because there would be too many employees.

Mr. CAMPBELL. Aside from your humor, is it a physical possibility; is it practicable in your business?

Mr. GUITERMAN. I do not think so.

Mr. CAMPBELL. Now, you make sure in your own business that these trucking concerns in New York deliver cargo to the steamship

companies on the day that they take it from your warehouse; is that right?

Mr. GUITERMAN. I may say we do in our business; yes.

Mr. CAMPBELL. You do in your business?

Mr. GUITERMAN. Yes.

Mr. CAMPBELL. You keep a system of check upon the truckman to see that that is done?

Mr. GUITERMAN. Well, I would have to get our shipping department to make a definite answer to that. I am not handling the routine details of the shipping department; but I am under the impression we do keep a very close check on it.

Mr. CAMPBELL. You do know, however, it has been very customary for trucking concerns in New York to take those goods in their own warehouse over night while in course of transportation to the steamship company?

Mr. GUITERMAN. I know it has been done; I would not say it was customary.

Mr. CAMPBELL. It is a very common practice.

Mr. GUITERMAN. I would not say it is; but I know it has been done.

Mr. CAMPBELL. I would like to have you name to me one steamship company which has changed the terms of its bill of lading since the war broke out.

Mr. GUITERMAN. I have not read a bill of lading for years until this week.

Mr. CAMPBELL. Then did I understand you correctly to say the companies had changed them?

Mr. GUITERMAN. I am so informed; yes.

Mr. CAMPBELL. You have no personal knowledge of it?

Mr. GUITERMAN. I may say on competent authority—may I ask you a question?

Mr. CAMPBELL. Yes.

Mr. GUITERMAN. Do you maintain that no steamship companies have changed the form of their bills of lading in the last three years?

Mr. CAMPBELL. I know of none; and I have made very diligent inquiry since the suggestion was made here and have found none.

Mr. GUITERMAN. No changes?

Mr. CAMPBELL. I do know that clauses you read here have appeared upon bills of lading for years, and during the very period of time when our friends admit the pilferage losses were negligible.

Mr. GUITERMAN. May I ask this: Do you consider a rubber stamp put on a bill of lading is a change in the bill of lading?

Mr. CAMPBELL. Yes.

Mr. GUITERMAN. If they are, do you not know new rubber stamps have been put on the bills of lading in the last three years?

Mr. CAMPBELL. Yes; during the war there were many new rubber stamps put on bills of lading; but that is not a change in the form of the bill of lading. [Laughter.]

Mr. GUITERMAN. Oh, yes, it is; it changes the contract.

Mr. CAMPBELL. Many of the rubber stamps put on to meet war losses were in use on the bills of lading that were printed and prepared before we got into the war.

Mr. GUITERMAN. Those rubber stamps are still on.

Mr. CAMPBELL. But excepting for losses which concerned war conditions, you will find there has practically been no change.

Mr. GUITERMAN. You still use the same rubber stamps that you did during the war? I am not in the shipping department and am not an expert, but I am under the impression that is a change.

Mr. CAMPBELL. Rubber stamps have always been used.

Mr. GUITERMAN. But some are now used that were not used before the war?

Mr. CAMPBELL. In this big loss that you spoke of, when were the missing articles first discovered?

Mr. GUITERMAN. We received the usual thing, you know. The survey took place at Genoa by Lloyd's agent. I do not remember—the papers came in the usual form. I really could not answer that question; I was not there.

Mr. CAMPBELL. Do you not put it forward as a sample case that should impose liability on the steamship company? If so, I would like to have you tell the committee—trace the transportation of that article from the moment it left your warehouse until the loss was discovered.

Mr. GUITERMAN. I will answer that.

Mr. CAMPBELL. And also whether or not it was a package that any one of the truckmen could practically have opened during transit?

Mr. GUITERMAN. Surely. That is why I brought out that case. Thank you. The point is, the cases were in good condition when they were delivered to the steamship company's dock in New York.

Mr. CAMPBELL. Let me ask you there: Were they taken by your truckman?

Mr. GUITERMAN. Yes.

Mr. CAMPBELL. And delivered to the dock on the same day?

Mr. GUITERMAN. I assume so.

Mr. CAMPBELL. Was it?

Mr. GUITERMAN That is our universal rule.

Mr. CAMPBELL. Was it in this case?

Mr. GUITERMAN. I am not being cross-examined. If you like, I will tell you this in my own way, if you do not mind.

Mr. CAMPBELL. I want the facts.

Mr. GUITERMAN. I will tell you in my own way. The goods were delivered to the dock in New York in good condition by our regular truckman in the regular way that we do our business every day. They were turned out at Genoa to the lighters. Now, there is the point; I do not know whether the theft or any part of it, or all of it, occurred on the steamship or in the steamship company's possession, or I do not know whether it occurred when the goods were in the possession of the lighters. The whole fault is, in my opinion, and that is the reason I brought it up, that at present there is no absolute means, an absolute law, where you can determine in whose hands the loss occurs. If the steamship company were compelled by law—I am not expressing that very well; if the changes we ask for were to take place, the steamship company would either get a clean receipt from the lighterage company or an unclean receipt. If this steamship company got an unclean receipt from the lighterage company, they are responsible; if they get a clean receipt, then the lighterage company is responsible. But now, as I understand it, it

does not make any difference what receipt they have; it does not make any difference what receipt is given, it is not a notice of claim.

Mr. CAMPBELL. From your personal knowledge, is it the practice of the steamship company to take receipts on discharging the cargo?

Mr. GUITERMAN. Not exactly. I simply affirm what I said before, that many times we have a claim and find the steamship companies are not liable.

(The following letter was later received from the American Exporters' & Importers' Association and is here printed in full, as follows:)

NEW YORK, N. Y., *August 2, 1921.*

HON. FREDERICK R. LEHLBACH.

Chairman Subcommittee on Marine Insurance,

House of Representatives, Washington, D. C.

DEAR SIR: Supplementing the statement made by our Mr. Guiterman at the hearings recently held by your esteemed committee, we submit the following quotation from a letter just received from our sister organization, the United States Exporters' Association in Buonos Aires:

"At the probable risk of repeating information already known to you, and with a view to getting from you an expression of opinion concerning the matter involved, as well as advice as to what has and what can be done toward eliminating difficulties with which our members are contending, we place the following before you:

"*Responsibility of steamship companies for pilferage and nondelivery of merchandise.*—Under the 'released bill of lading,' as you know, the liability of the steamship companies is limitted to $100 United States gold per package. The number of lines of merchandise representing a value of $100 or less per package is infinitely small, and consequently it is rarely that the amount collected from the steamship company for pilfered goods is sufficient to cover their value. As a matter of fact, the valuation of $100 per package, in most cases, bears no relation to the actual value of the merchandise.

"It is our understanding that the carriers have been enabled to evade what seems to us to be the responsibilities which are logically theirs, through the modification during very recent years of the common law by statutes and judicial decisions. It appears to us that a carrier receiving for merchandise in good condition at port of shipment and being paid to carry the same to destination should logically be obliged to fulfill his contract by delivering the merchandise in good condition at destination or respond for the full value of the missing goods, or to the full extent of any damage done to them, unless resulting from an act of God, the public enemy, or the inherent nature of the goods. And we believe that under the common law and until very recent years the steamship companies were held so liable and responded for loss and damage without attempt to evade their responsibility. It, perhaps, is conceivable that during the general upheaval attendant upon the World War, there may have existed well-founded reasons for the temporary modification of the common law, but the result has been a vast amount of theft, pilferage, and carelessness on the part of carriers' employees, losses on this account have assumed serious proportions, and these have fallen very largely upon shippers, consignees, and underwriters.

"As experience has proved the position brought about by the modification of the common law to be an inequitable one, and as there seems no longer to exist any reasonable excuse, if there ever did exist one, for limiting the liability of the carriers, we are of the opinion that the exporters in the United States should interest themselves in an active way to bringing about legislation which will oblige carriers to carry freight under a uniform bill of lading, involving upon them responsibility to deliver at destination in good condition, merchandise entrusted to their care, and for which they receive ample remuneration under their present 'released bill of lading.'

"We are under the impression that your association already had this matter in hand, but we should like to know what has been and is being done, and an expression of opinion from you as to the probability of corrective measures being effected in the near future.

"In comments above we have not touched upon the option extended to every shipper to ship his goods on an ad valorem basis, because, as you are

well aware, freight on this basis, on most lines of merchandise, is prohibitive and can not be entertained. Furthermore, we do not believe that a carrier is in any way justified in demanding freight on this basis on general cargo.

"The only other avenue of safety for the shipper under existing conditions to the insuring of his merchandise against theft and pilferage and against nondelivery, which, owing to the abnormal amount of losses due to causes already mentioned, the cost has advanced to an unprecedented figure, some insurance companies are no longer willing to underwrite this class of insurance, and it is well within the realms of possibility that a continuance of the use of the 'released bill of lading' by the carriers may result to all insurance companies refusing to insure against theft and pilferage and nondelivery.

"*Payment of claims by steamship companies.*—It is our understanding that the amount of the carriers' liability is, under a 'released bill of lading,' $100 per package, and where ad valorem freight is paid the full value of the merchandise in United States gold, and payment of claims should be made by the carriers in that currency by draft on New York, or in local currency converted at the rate of the day. Many of the steamship agents in Buenos Aires have been insisting upon their right to pay claims in Argentine currency at rates arbitrarily fixed by them, and in some cases have arrived at an arbitrary amount, to be paid in Argentine currency without stating the conversion rate. It seems to us that there should be a clear understanding on this point with the steamship lines in New York, and the steamship agents in Buenos Aires be properly instructed, so that the consignee at this end will receive justice in this regard without the loss of time in disagreeable argument.

"*Steamship companies' obligation to revise packages at destination.*—As you know, it is customary and obligatory upon the consignee, if he expects to collect insurance for pilfered goods, to request a revision by the steamship agents in Buenos Aires of packages which show by appearance or by weight that the package has been tampered with and merchandise extracted therefrom. It is our contention that no steamship agent is justified in refusing a request to make this revision and issue a certificate of his findings, particularly where a clean bill of lading has been issued for the goods at port of shipment. It has become almost common practice on the part of many of the steamship agents in Buenos Aires to refuse to revise packages on the ground that 'old, used containers have been employed,' 'cases have not been properly strapped,' 'containers are not sufficiently strong,' etc. The fact that in most instances where vigorous protests have been made the steamship agents have revised goods subsequent to their refusing to do so does not alter the case. If it is the obligation of the steamship agent at port of desinaion to revise packages upon request, as we think it is, they should comply without attempt to evade responsibility, and we think that the steamship companies in he United States should so instruct their agents here.

* * * * * * *

"With reference to theft and pilferage insurance, the insurance agents here almost universsally contend that this does not cover against loss of entire packages, claiming that nondelivery does not constitute theft. The distinction appears to be a very technical one, as if a package is placed on board steamer at port of shipment and is not delivered to the consignee, the goods have, as far as he is concerned, been stolen, whether they were delivered in error to another party by the steamship company and not returned or whether the entire package was actually stolen while in possession of the steamship company. Still we are somewhat in sympathy with the insurance companies in their contention that the carriers should respond in full for such losses. However, we should like to have from you an interpretation of theft and pilferage insurance, and whether or not this does cover loss of entire packages.

"Through one of the British trade papers we learn that shippers in the United Kingdom are insisting upon a uniform bill of lading, throwing responsibility upon steamship companies and common carriers for loss of entire packages, as well as for loss of contents of packages.

"The present practice not only encourages theft on part of seamen but virtually removes any incentive the steamship companies have for repressing pilferage.

"We have gone rather lengthily into matters which, as stated in the first paragraph, you are undoubtedly more or less familiar with, but the difficulties with which our members are contending are a hindrance to American trade, and we have no definite prospects of relief. The American Chamber of Commerce has been occupying itself with these matters, and we are under the

impression that some considerable interest is being taken in the United States, probably by your association."

We are pleased to note from your letter of July 27 that when the hearings are printed you will furnish us with a dozen copies.

If at any time we can be of further service to your committee, we hope you will not hesitate to call upon us.

Very truly, yours,

AMERICAN EXPORTERS & IMPORTERS' ASSOCIATION,
E. C. HINES,
Secretary to the Board of Directors.

Mr. LEHLBACH. I understand that Mr. Herrick desires, briefly, to supplement his statement of yesterday.

STATEMENT OF MR. CHARLES E. HERRICK—Resumed.

Mr. HERRICK. Mr. Chairman, in calling your attention last evening to the measures which the packers have taken to insure safe delivery in the way of better package and more expensive package, and so on, I neglected at the moment also to say that a number of the concerns, my own concerns among them, employ a checking system—employ representatives at the seaboard to tally these goods out of the car, to give us the seal record of the car, and to tally the number of boxes out of the car, so that we may, if possible, know whether the loss occurs on the inland haul or after the goods are discharged from the car to the dock or lighter.

I also want to say, if some of my friends here won't consider it quibbling, that there have been prosecutions for pilferage. I would like to refer them to the case of United States *v.* Chapman et al., in New York. In that particular case I was in New York City one day, and on the bourse, and one of the gentlemen in the trade there said to me, "What is the matter with your lard." I said, "I do not know that there is anything the matter with it." He said, "Lard of your brand is being offered here at 2 or 3 cents under the market." I said, "We have not shipped any lard to New York for quite a period, and I do not understand why, if we had, it should be offered under the market. Possibly it is old lard that has been shipped a good many months ago which, on account of its present condition, is being offered low on the market. At any rate, I wish you would look into it."

What developed is this, from my recollection—I am speaking now only from recollection, because I have not the papers with me—about 347 tierces, and in that connection I would like to call your attention to the fact that a tierce, I judge, contains approximately 360 pounds, net weight, of lard, and I think it was 347 tierces that had been stolen in New York Harbor. If I am correct as to the number of tierces, that would be a total net weight of nearly 113,000 pounds. That lard was taken in the harbor there and, as the evidence proved, was put in cold storage by the thieves in some 8 or 10 cold-storage warehouses, and it was then being offered on the bourse at 2 or 3 cents under the market.

That case was prosecuted by the United States, by the way, and not by the shipowners or operators, and five men were sentenced to prison in connection with that particular theft. It developed that two of those men were operating a chain of restaurants, and the supposition was that they were stealing this lard for use in their own

business and that, in this particular case, they got such a large amount of it that they could not absorb it all in these restaurants and, therefore, were offering it for resale.

The question, it seems to me, is a very idle one, to ask the shipper where this pilferage occurred. It must be evident to everybody that if we knew we would be successful in either prosecuting the thieves and thus breaking it up, or putting a stop to it, or else securing reimbursement. But these goods are out from under our control; they are in the hands of the carriers, and to say the hour of the day or the particular employee of the carrier who commits this pilferage, is asking certainly an idle question.

In regard to this question of a reasonable time in which to present these claims, the gentleman has just referred to some of the bills of lading here and I notice in this first one that I looked at section 14 provides that all claims for short delivery, loss or damage, of whatsoever nature, must be made in writing to the steamer's agent at the port of destination of the goods within five days after the steamer or lighter finished discharging; and always before—and that "always before" is printed in capitals here—always before the goods are taken delivery of by the consignee—manifestly an impossibility.

Until that consignee gets delivery of his goods, how in Heaven's name is he to know that there is loss or damage of them? Now, that is a Red Star Line, New York to Antwerp bill of lading, operated by the I. M. M.

Then the suggestion I think I made last night, but am not certain, that there should be full liability for loss or damage, except in the case of force majeur, act of God, etc. I do not know whether I stressed the point last evening, but I would like to do so now, if I did not, that in this question of surveys by Lloyds representative, in foreign ports, they arbitrarily fix the loss due to rough weather at such a percentage of the total loss, and the balance to pilferage. That absolutely estops the owner of the goods from securing, under his marine policy, anything more than the percentage which that particular surveyor thinks, in his opinion, is the loss resulting from the rough weather. In some cases, the paper filed by the captain mentions rough weather, but is entirely silent as to whether the cargo shifted and worked in the hold. Therefore, the owner of the goods is powerless to collect under his marine policy. I would like to lay special stress on that, that the Lloyds survey practically works as an estoppel for the collection of the insurance under the marine policy.

Now, the interest of the foreign buyer is not in securing a certain number of dollars; he does not buy dollars; he does not buy francs or marks; he buys goods. And we assume he buys them because he needs them. He wants them, and the payment, therefore, of these sums does not to any extent placate him for the nondelivery of the goods, either partially or in entire packages. The shipments made by the packers are almost exclusively in carload lots and in refrigerator cars. We had a case of the Triangle Steamship Co. of two carloads of shoulders. We booked them for shipment to Antwerp. They notified the inland carrier to deliver those goods to their dock. The inland carrier did so. Either they were disappointed, or for some reason—at any rate, no boat appeared to take those goods. They were allowed to lie on the open dock in New York for a period of four weeks.

There was no notice given to us that the goods were on the dock, and, as it develops, we have no recourse against them for the loss sustained. The delivery of goods, either by lighter or by car, to the steamship docks is very largely a matter of convenince to the boats themselves. They have a boat which is about to load at a certain dock and it certainly is to their advantage to have a certain amount of goods there that can be quickly loaded as soon as a ship is available. But they assume, and so far have successfully combatted in the claims, that they are not responsible until those goods reach ship's tackle; although, as in this case, they ordered the goods to the dock for their own convenience and profit, so as to have them ready when that boat appeared. Now, then, the inland line claims that it is impossible for them to know—and in that we must agree with them—that the ship is ready to load and when they receive orders from the steamship people to make delivery there, they feel that they have completed their part of the carriage. But, as I say, the steamship people will not assume liability until the goods reach ship's tackle; but if there is no boat there naturally they can not be put at ship's tackle. Now, that is the hiatus in there between the liability of the two carriers that I hope very much your committee will cover in this suggested legislation.

Mr. BENTLEY. Mr. Chairman, may I say in reference to my remarks last night that under the Harter Act there were some changes, one or two things in the phraseology rather on the constructive side, not destructive of the act. One is the question of notice where through the failure of the ship to make its final harbor and it discharges beyond the destination or discharges somewhere where the delivery can not be immediately effected. In our case before the Interstate Commerce Commission, we stressed the necessity of giving the shipper or consignee notice of the fact that those goods have been placed somewhere else than was intended. There is a question of claims. In the through bills of lading to-day, rail and ocean, 10 months is allowed for filing of claim. In the domestic business it is six months. We placed the longer period of time of 10 months because a ship leaving the country going to some far distant point had to get the papers back to the shipper and manifestly the farther away you are the longer time it takes. We felt very strongly on that and I would like to indorse what Mr. Guiterman said, that there should be some delay permitted in the filing of claims for that period of time which will permit the documents to be returned and properly handled. In other words, this restriction of giving notice before you leave the dock and all that should not restrain the shipper or whoever is the owner of the property from the opportunity to get his papers together and file claim within a reasonable time which, in this case, we hold is 10 months.

I should like to add that to my testimony of last night.

Mr. LEHLBACH. Is there any other representative of the American Exporters and Importers' Association who desires to speak on what Mr. Guiterman said in behalf of his association? If not, we will proceed to call Mr. Baldwin.

STATEMENT OF MR. C. B. BALDWIN, TRANSPORTATION MANAGER UNITED SHOE MACHINERY CORPORATION, BOSTON, MASS.

Mr. BALDWIN. Mr. Chairman and gentlemen, when we heard of this proposed hearing we welcomed the opportunity of coming here because of the very great difficulty we have had in collecting claims from the steamship lines under the present conditions of the ocean bill of lading. I have here a sample of a bill of lading issued by the Emery Line, of Boston, which I think is a fair sample showing the conditions. There are 27 clauses all together and it frequently happens that after the goods have been delivered to the steamer and the goods are in the hold and we receive our bills of lading back we find that there are rubber-stamped clauses which we are unable to have removed from the bill of lading, such clauses as "Said to contain quantities unknown, etc."

To illustrate the difficulties that we have had because of these clauses, I might give just one instance: I remember that during the war we shipped to New York a quantity of steel to be exported to France. We traced the car through to the dock and obtained a receipt from the receiving clerk, and later obtained a bill of lading. We sent these abroad, and after some months received word that the goods had never arrived. We traced the shipment vigorously and finally the steamship company notified us that it was impossible to show delivery and that they would honor our claim. We had prepaid freight to the amount of about $1,100 on that car of steel, and naturally in making our claim we included the $1,100, making a total of about $7,000. The claim was not declined by the steamship company, but it was ordered reduced by the steamship company because of the fact we included the prepaid freight, and our attention was called to a clause in the bill of lading which we had admittedly overlooked. It states that the freight would be retained whether earned or not earned. The matter was referred to our legal department, and it was finally put up to an admiralty lawyer in New York, and the opinion was rendered that we were absolutely helpless, that we should be obliged to reduce our claim by $1,100, although the investigation showed that this particular lot of steel was stolen from the dock in New York and never went aboard the ship, and it seemed to us manifestly unfair that we should be obliged to pay the steamship company $1,100 when apparently they had never transported the cargo.

Of course, when those rubber-stamp clauses appear on the bill of lading we naturally protest, and sometimes quite vigorously, and the steamship lines tell us it does not amount to much because we can always get insurance. But that is easier said than done; that is to say, we are not always able to collect. I have in mind one occasion particularly of a shipment made to South America and covered by insurance, under the ordinary policy, which protects us from the perils of the sea. This particular shipment was damaged as the result of some other cargo being put on top of ours, and the goods were so badly damaged that we found the goods worthless. The claim was first put up to the steamship company, who stated that the insurance company was liable as it was the result of perils of the sea. The claim was then put up to the insurance company, and the insurance company stated that the steamship company was liable

because of improper stowage, and the correspondence went back and forth, and it was over a year before we were able to collect our claim. I think, if my recollection serves me correctly, that the insurance company finally paid the claim, probably for business reasons. It seems to us that it is high time that some kind of law or amendment was passed that would give ordinary protection to the exporter.

Taking up first the question of the full actual value, the necessity of steamship companies being responsible, we at the present time, against one steamship line from Boston, have 12 claims, the total of which is $2,980.68. Of course, those are small claims, and the cost of the ocean freight insurance companies, etc., amounts to $326.26, and we are informed that, under the bill of lading clause, it is absolutely impossible to collect more than the actual invoice of the goods. In other words, although it has cost us $326 to put those goods or follow those goods to South America, we are unable to collect that expense, which seems to us unjust. Under the valuation clause we are limited to $100 per package. In making up our shipments we make up a miscellaneous or send forward a miscellaneous lot of goods. I think there are something like 127 commodities which we export, and one case may be valued at $50, another case at $500, and possibly another case at $1,000. In delivering 200 or 250 tons to a steamer it is pretty difficult to determine or to notify the steamship company of the value of every package and possibly obtain special insurance or pay an extra rate on those packages, and it seems unfair from our standpoint to limit this to the value of $100 per case. At the present time I have in mind particularly two claims, one for $396.10, the value of one case, and another case valued at $1,392.62, and we are called upon to reduce those to a basis of $200, or a value of $100 per case.

As regards the burden of proof in negligence, we have at the present time a claim against the New York Steamship Line for $180.05 for theft and pilferage. Now, as regards this particular claim, something very peculiar has developed, and I would like to read into the record a portion of a letter received from our office in Rio Janeiro, as follows:

> At the time of the discharge the boxes showed that they had been pilfered, so our customhouse broker made a petition for an examination, which petition was taken to the "Cia Commercial e Maritima." Rio agents of the steamship company, inviting them to be present at the official inspection. They absolutely refused to take any part, but as it is necessary for them to go on record on the documents of the inspection process and state that they have been advised, the papers were taken to them and carry their rubber stamp as also their acknowledgment of the advice of the official inspection. This is the legal notice they received and acknowledged and is all that is necessary.
>
> Further, for your information, the agents above mentioned are well known in Rio as absolutely refusing to take part in any official investigation, and to further our position and theirs in the matter, we inclose herewith copies of our two letters to them of March 21, as also their reply of March 24, in which they lay stress upon the point that in accordance with one of the clauses of the bill of lading, they are not responsible for the shortage, adding that inasmuch as they did not assist at the official inspection they can not be responsible. However, the fact remains, they did not assist at the inspection simply because they would not, and even to-day they take the same position that they will not assist at any inspection.

We, of course, filed our claim in New York with the agent and submitted it, and they declined because of no report from their agent in South America, and you can judge for yourself as to what instruc-

tions may have passed between the agents in New York and the agents in South America. In other words, although we know that we have a loss we are unable to collect one cent from the steamship company because under the present act, as I understand it, the burden of proof is on the shipper or the consignee. We have another claim against a New York steamship company which has been declined for the reason of the rubber-stamp clauses that I have previously referred to which are said to contain a quantity unknown.

If I may, I would like to read a letter from this New York steamship line. I find that I do not have it with me but have it in my file and can submit it later if desired.

As regards the time limit for presenting claims, we have several claims at the present time against the United States and Brazil Line, which have been declined because of the fact that the claim was not presented within three days after the arrival of the steamers. That was absolutely impossible for the reason that the goods did not come into our possession until 30 days after the arrival of the steamer, according to advices that we got from South America. I would like to read into the record the letter that we have from the United States and Brazil Line on this subject.

Referring to our letter of March 16 regarding your claim No. 179, Steamship *Opequan*, for shortage of 11,000 eyelets, we beg to state that we have received advice from our Brazil office, and according to the landing of this material, your claim should have been entered on August 3. The official survey was not requested until August 26.

Due to the above fact we must state that we can not recognize any claim from you, because your Rio de Janeiro office did not comply with the terms and conditions of the B/L.

We might state that the conditions apply against your claim No. 180 on the same steamer.

Yours, very truly,

UNITED STATES AND BRAZIL STEAMSHIP LINE.
H. J. CHARLWOOD, *G. F. A.*

It is manifestly unfair to expect the shipper to do something which it is physically impossible for him to do, as in this case, when the goods have not come into our possession and we have no idea of the damage that resulted.

I thought I would give those facts, because it may be helpful in presenting some amendments which we believe are absolutely necessary if we are to continue in the export business.

Mr. LEHLBACH. You referred in the beginning of your statement to clauses rubber stamped on this bill of lading. Can you give us any idea as to the number of such clauses and their provisions?

Mr. BALDWIN. I have made a memorandum of two only, which I have referred to. I know that at times we have had bills of lading returned that said we are not responsible for leakage, not responsible for damage by rust, and causes of that nature. There seems to be no uniformity on the part of the steamship companies in the matter of putting on these clauses. They appear on bills of lading when we receive them and they are objected to and sometimes they are removed and sometimes not—more often not.

Mr. GUITERMAN. You were asking about the terms of English bills of lading as compared with American. I was just looking it up.

Mr. LEHLBACH. Mr. Gaines asked the question.

Mr. GUITERMAN. I was just looking over the two English bills of lading from American ports. That does not prove that this is on the English bills of lading at other English ports, but these bills of lading in several respects are more liberal than the American bills of lading of other companies. Each one of these bills of lading has a £200 limitation instead of $100 limitation of damage per package; but on claims for short delivery they seem to be much more liberal. Here is one of the American-Australian routes:

A claim for short delivery or of damage done to goods and all other claims whatsoever are to be presented at the office of the ship agent at the point of discharge within one month after the examination shall have been finished. Otherwise the claims shall be deemed to have been waived even though arising from negligence.

Mr. EDMONDS. That is the American-Australian Line?

Mr. BALDWIN. American-Australian under the British flag.

Mr. EDMONDS. Sailing from where?

Mr. BALDWIN. New York to Australasian points.

Mr. EDMONDS. A £200 limitation instead of $100?

Mr. BALDWIN. £10 per cubic foot or not more than £200. Those packages have 20 cubic feet or more.

Mr. KIRKPATRICK. Here is an Australian line that has £100 limitation and £5 per cubic foot for United States of America lines.

Mr. BALDWIN. That is better than the American.

Mr. FITZPATRICK. Yes.

Mr. BALDWIN. Here is another, the Australian Commonwealth and Dominion Line that has £10 per cubic foot or £200 per package.

Any claim for short delivery or of damage done to goods and all other claims whatsoever to be made at the port of discharge, and at no other port, and goods are shipped and bill of lading granted subject to this express condition.

There is no time limit. In our American bills of lading you have got to give a notice before the goods leave the dock. I believe it is correct, as has been stated by others here, that notice has to be given before you leave the dock.

Mr. LEHLBACH. The committee will stand in recess until 2 o'clock this afternoon.

(Thereupon, at 12.30 o'clock p. m., the committee recessed until 2 o'clock p. m., Tuesday, July 19, 1921.)

(The following statements were ordered printed in the record:)

UNITED SHOE MACHINERY CORPORATION,
Boston, Mass., July 22, 1921.

Hon. F. R. LEHLBACH,
Chairman Subcommittee Marine Insurance.
House of Representatives, Washington, D. C.

MY DEAR SIR: With reference to the proposed amendment to the Harter Act, I agreed at the hearing last Tuesday, July 19, to submit an additional memorandum giving reference to certain rubber-stamp clauses which have appeared on export bills of lading.

Your attention is respectfully invited to the attached memorandum, which, I think, is self-explanatory.

Yours. very truly,

C. B. BALDWIN,
Manager Transportation Department.

CLAUSES WHICH HAVE BEEN RUBBER-STAMPED UPON OCEAN BILLS OF LADING WITHIN THE LAST TWO YEARS.

"The steamer can not be held responsible for shortages due to pilferage (whether effected by the company's employees or not), which risk can be covered by an insurance company."

"Steamer not accountable for loss or damage arising from frailty of packages."

"Steamer not responsible for leakage."

"Ship not responsible for breakage of glass."

"Insufficiently protected, ship not responsible for chafing, torn, or mended wrappers."

"Steamer is not responsible for loss or damage resulting from bundles becoming unfastened."

"Steamer not accountable for breakage of unprotected packages."

"Steamer not responsible for pilferage or loss of contents."

"It is agreed that the liability of the steamer is limited to $100 per package or pro rata for partial loss of the package, and freight is charged on this basis."

NOTE.—On a bill of lading covering several classes of cargo some of the clauses relating particularly to a certain class are so placed that they apply to the whole bill of lading and not to the particular class which they are intended to cover. This gives the steamship company release from responsibility on the whole bill of lading, which is very unfair to shipper.

UNITED SHOE MACHINERY CORPORATION,
Boston, Mass., August 3, 1921.

HON. FREDERICK R. LEHLBACH,
Chairman Subcommittee on Marine Insurance,
House of Representatives, Washington, D. C.

MY DEAR SIR: Supplementary to my letter of July 22, to which you replied on July 26, I am inclosing another set of ocean bills of lading.

In order that you may be advised of recent changes, I would invite your attention to rule No. 3 as printed on the bill of lading, which for convenience I have marked "No. 2," in order that you may note the change which has been made very recently. This is rule No. 1, as shown on the bill of lading, which I have marked "No. 1," revised.

In the light of recent developments it appears to us as high-handed procedure to insert a clause in a new form of bill of lading without any notice, which we are compelled to use, which makes it practically impossible, in the event of loss, to collect more than $15 in some cases. This is really what it means, notwithstanding the fact that the limitation is placed at $150, for it frequently happens that a package will not measure more than 1 cubic foot or 1½ cubic feet. It is my understanding that certain lines operating out of New York have placed the limitation at $8 per cubic foot.

As regards the bill of lading which I have marked "No. 3," I would respectfully call your attention to clause 8, from which you will see that if the exact wording of this clause is enforced in the case of loss and damage we can collect but little, if anything, from the steamship company. This, of course, tends to make the insurance rates very high, and it is quite probable that in time we shall be unable to secure full protection from any insurance company.

Yours, truly,

C. B. BALDWIN,
Manager Transportation Department.

The bill of lading sections to are as follows:

Rule 1 of the Leyland Line (Boston to Liverpool), bill of lading marked "No. 1":

"1. It is also mutually agreed that the value of each package receipted for as above does not exceed the sum of $100 unless otherwise stated herein, on which basis the rate of freight is adjusted."

Rule 3 of the Leyland Line (Boston to Liverpool), bill of lading marked "No. 2":

"3. Also, it is also mutually agreed that unless a higher value be stated herein and declared herein to be the basis of adjustment of freight, the value of any package shipped hereunder does not exceed $150 per package, nor $15 per cubic foot, nor $30 per hundredweight, and the freight thereon has been adjusted on the basis of such valuation. In computing any liability of the carrier in respect of the goods, no value shall be placed thereon higher than the invoice cost, not exceeding $150 per package, nor $15 per cubic foot, nor $30 per

hundredweight (or such other value as may be stated herein as the basis of freight), nor the proportionate part of such cost and value, in case of any partial loss or damage."

Clause 8 of the Boston-Buenos Aires Line bill of lading:

"8. Unless a higher value be stated herein and upon the dock receipt sent to the dock with the goods, the value of the goods does not exceed $100 per package or piece, and the freight thereon has been adjusted on such valuation, and no oral declaration or agreement shall be evidence of a different valuation. In computing any liability of the company in respect of the goods, no value shall be placed thereon higher than the invoice cost (including freight prepaid hereunder) not exceeding $100 per package for such other value as may be stated herein). In case of a partial loss or damage the steamship company shall not be liable for more than such proportion of the same as $100 or the value declared bears to the actual value. Nor shall the company be held liable for any profits or increase of price or value over such cost not exceeding said value, nor for any special or consequential damage or commission, profit, interest, duty, storage, landing or other similar charges, and the company shall always have the option of replacing any lost or damaged goods. In case of any loss or damage for which the company shall be liable the company shall to the extent of such liability have the full benefit of any insurance that may have been effected upon the goods or against said loss or damage, and as well also of any payment to insured by underwriters repayable only out of recovery against the company, notwithstanding the underwriters are not obligated to make such payment. The company shall not be liable for any loss or damage unless written notice of claim be presented in writing to the company within 90 days after delivery of the goods to the company, nor unless suit therefor is commenced within six months after delivery of the goods to the company, and the lapse of such period shall be deemed a complete bar to recovery in any such suit or proceeding not sooner commenced, notwithstanding the company may be a nonresident or a foreign corporation. Nothing shall be deemed to waive the provisions of this clause except a written express waiver signed by the company. Any claims for loss or damage by short delivery or otherwise arising out of this bill of lading shall in the option of the company be dealt with in New York according to the laws of the United States of America to the exclusion of proceedings in the courts of any other country."

AFTER RECESS.

The subcommittee reassembled at 2 o'clock p. m., pursuant to recess.

Mr. EDMONDS. The committee will come to order.

The first witness, I believe, is Mr. Hill. Is he present? You may proceed, Mr. Hill.

STATEMENT OF MR. W. J. HILL, REPRESENTING THE CLEVELAND WORSTED MILLS CO. AND THE CHAMBER OF COMMERCE OF THE CITY OF CLEVELAND, OHIO.

Mr. HILL. Mr. Chairman and gentlemen of the committee, the Cleveland Worsted Mills Co. embarked on an export business some seven years ago, and during that time they have developed their business in all parts of the world.

When the war came on the policy of the company was declared to be to pursue such markets as we were hoping to continue and to hold after the war was finished. Consequently we developed the markets in which the United States was most vitally interested—the markets of the Caribbean, of Hawaii, of the Philippine Islands, of Latin America, of China, and of Japan. And during the war the experience of our company was such that the losses which we suffered from theft and pilferage and nondelivery were so great as

almost to make us give up the export business. Since the war those claims and losses through those causes have increased rather than decreased, and at a time when exporters, manufacturers, and others who export merchandise are in the greatest need of assistance, they find themselves confronted with this matter of loss through pilferage, through nondelivery by steamship companies, and it is so serious that it is almost a question as to whether they shall continue in the export business.

The cessation of exports to-day, when we need exports, when we need to export merchandise—the cessation of any exports would be nothing less than disastrous. This country needs exports. We need to export in order to continue to employ the number of people in this country which are employed in manufacturing centers.

The lines chiefly of manufactured goods have been the most subject to theft and pilferage, and the causes of this theft and pilferage, as I see it, are not only in the United States, they are in Latin America, they are in Europe, they are world-wide. They are not confined to any one country. It is a disease, apparently, that has spread the world over. The predatory elements of all populations have seemed to spring up and to help themselves to anything that they could get their hands on, so long as it was merchandise that could be used.

The amount of theft and pilferage that we have experienced in our domestic business will be of interest to you, because this question is not only one relating to foreign exports but it is also one relating to our domestic business.

I have here a statement which was hastily compiled, because of the short notice which we had of this meeting, showing our outbound freight, the claims which we have paid to three railroad companies—the Pennsylvania Railroad Co., the Erie Railroad, and the Baltimore & Ohio Railroad Co. In the 10 years from 1903 to 1913 our total claims against those railroad companies amounted to $7,000, or an average of a little over $700 per year. In the year 1916 our claims against those railroad companies were three times what they were for the total 10 years previous. In other words, they amounted to $22,000 for the year 1916.

For the five years 1916 to 1920, inclusive, our total claims for interstate loss were over $90,000.78, showing that this theft and pilferage business was not confined only to the export trade but was also taking place in the interstate trade which we do.

Our company is a large one and we do many millions of dollars of business, but the difficulty that we have as exporters is this, that whereas our Government has been pleased to recognize a uniform bill of lading on the railroads, and our claims being presented to these railroad companies have been met by the railroad companies and have been paid, and we have been satisfied. That is the smallest part of it, because the claim itself, the monetary consideration, is a consolation merely; what our customer requires is the merchandise itself. But when we come to export business and there are claims for theft and pilferage after the merchandise leaves New York, we have no remedy.

I have in my hand a list of claims coming under various heads. List A is a list of claims for theft and pilferage. That is, merchandise, where a case or a box has been broken into and some-

thing has been abstracted from it. In all those instances on this Exhibit A there is no question that that theft and pilferage was done after the merchandise left New York.

For your information, sir, I may say that the Cleveland Worsted Mills Co. do not buy their boxes nor do they use any second-hand boxes. We make our own boxes and we make them of wood such as you would scarcely believe, so good and so fine is it. It is inch and a quarter wood. The boxes are double cleated. That is to say, they have straps of wood around them twice, and in addition to that they have a wire seal right around the whole box. So we have taken all the possible care that we could in making up our own boxes and in making our merchandise secure before it leaves our own factory.

In this list B, Exhibit B, I have 12 instances of what is termed "nondelivery." Nondelivery is a case of merchandise being accepted by a steamship company and the steamship company failing to deliver the same. In all of those cases the steamship company have recognized that they have accepted the merchandise but are unable to prove delivery, and when the matter is taken up with them they refer you to clause No. 21, which clause, I think in most bills of lading—it is in several I have here—provides that they are limited in their liability to $100.

Now, gentlemen, I do not say that steamship companies are any worse than anybody else, but I would draw your attention to the fact that in the case of the railroad claims we were paid in full and could satisfy our customers in full, but when it came to the case of a steamship company accepting merchandise and being responsible for it, then they decline the responsibility by saying that they are limited by the liability clause No. 21 to $100. The steamship companies have been under a difficult situation.

Mr. EDMONDS. Did you sign those bills of lading and did you object to them at that time?

Mr. HILL. We have no option, sir, because certain steamship companies operate certain markets, and you have to take the steamship companies that are running to those markets, and the bill of lading is printed, and you have to accept it as they make it out.

Mr. EDMONDS. You knew that it was in there when you signed it?

Mr. HILL. Yes; we know it, but we have no other option.

The steamship companies have themselves been in a difficult situation. During the war they have had help and employees that were not amenable to discipline, and we can very well understand that not being amenable to discipline they were not disciplined, and, consequently, when employees are not disciplined, they do as they like. They took merchandise and stole it and sold it and converted it into money. We know this. It is common knowledge.

The consequence of all this is that any reputable manufacturer or exporter who insures his merchandise has found that he is up against an extraordinary proposition with the insurance people. Up to last year the average premium for theft and pilferage for Latin America, including nondelivery, was approximately from five-eighths to 1 per cent. That included all risks. To-day the average premium is between 5½ and 6 per cent, and in some cases it runs to 10 and 11 per cent of the value of the merchandise. I know of no stable manufacturing

business that will stand any such premiums as the 5 to 11 per cent that is demanded by insurance companies to-day.

I hand you herewith Exhibit A showing you a schedule of rates existing last year and the rates for the same service demanded to-day by one of the best insurance companies in this country. That will show you the difference between the rates existing and the rates that were previously existing.

Mr. EDMONDS. I would like to have you put both of those into the record.

Mr. HILL. This gives the names of the customers, the number of the bale or case, the steamship company, and all the information. I have no objection whatever to these going into the record.

Mr. EDMONDS. They will be put into the record at this point.

(The papers referred to follow:)

EXHIBIT A.

Schedule showing new and old rates attached to policy No. 10457.

[Commodity: Manufactured woolens in bales and cases. Insured at and from Cleveland, Ohio, by rail to New York.]

YEAR 1919-20.

New York to—	Marine insurance.	Theft and pilferage.	Total.
		Per cent.	
1. Vera Cruz	$0.20	½	$0.70
2. Merida, Yucatan	.30	¾	1.05
3. Mexico City	⅓	2	2.33
4. Habana, Cuba	.14	¼	.39
5. Barranquilla, Colombia	.35	½	.85
6. Buenaventura, Colombia	.45	1	1.45
7. Bogota, Colombia	.01½	1½	.03
8. Peru	.50	1½	.02
9. Bolivia, Ecuador	.01	2	.03
10. Valparaiso, Chili	.55	2	2.55
11. Brazil	.30	½	.80
12. Argentina	.40	½	.90
13. Porto Rico	.22	¼	.47
14. Central America	.50	1	1.05
15. Philippines	.37	¼	.62

TO-DAY'S RATES.

New York to—	Marine insurance.	Theft and pilferage,	Nondelivery.	Total.
		Per cent.	*Per cent.*	
1. Vera Cruz	$0.20	1	1	$2.20
2. Merida, Yucatan	.30	1½	1½	3.30
3. Mexico City	.33	3½	3½	7.33
4. Habana, Cuba	.14	3½	3½	7.14
5. Barranquilla, Colombia	.35	2	2	4.35
6. Buenaventura, Colombia	.45	2½	2½	5.45
7. Bogota, Colombia	1.50	3½	3½	8.50
8. Peru	.50	3½	3½	7.50
9. Bolivia, Ecuador	1.00	5	5	11.00
10. Valparaiso, Chili	.55	3½	3½	7.50
11. Brazil	.30	2½	2½	5.30
12. Argentina	.40	2½	2½	5.40
13. Porto Rico	.22	1	1	2.22
14. Central America	.50	2½	2½	5.50
15. Philippines	.37	1	1	2.37

Exhibit B.

GOODS STOLEN OR PILFERED IN TRANSIT.

1. Case 7181: Pilferage value, $214.88; stolen in transit; steamship company refuse to pay.
2. Case 6649: Pilferage value, $1,610.06; stolen in transit; steamship company refuse to pay.
3. Case 7145: Pilferage value, $1,519.20; stolen in transit; steamship company refuse to pay.
4. Bale 6648: Pilferage value, $338.61; stolen in transit; steamship company refuse to pay.
5. Bale 7216: Pilferage value, $421.88; stolen in transit; steamship company refuse to pay.
6. Bale 7634: Pilferage value, $320.13; stolen in transit; steamship company refuse to pay.
7. Case 8147: Theft and pilferage value, $280.50; stolen in transit: no settlement.
8. Case 6871: Theft and pilferage value, $376.64; stolen in transit: no settlement.
9. Case 6870: Theft and pilferage value, $270.88; stolen in transit; no settlement.

Exhibit C.

GOODS LOST OR SHORT DELIVERED BY STEAMSHIP COMPANIES—CLAIMS FROM JANUARY TO APRIL, 1921.

Bale 6104, lost or short delivered by United Fruit Co., value $350. United Fruit Steamship Co. paid $25.33 in full discharge.

Bale 5062, lost or short delivered by United Fruit Co., value $600. United Fruit Co. offered $100 in full settlement.

Case 6914, lost or short delivered, value $1,700. Steamship company offers $100.

Case 6749, lost or short delivered, value $3,400. Southern Pacific Steamship Co. offers $100 in full settlement.

Bale 7631, lost or short delivered, value $494.92. United Fruit Co. offers $100 in full settlement.

Bale 6993, lost or short delivered, value $500. Ward Line offers $100 in full settlement.

Bale 6624, lost or short delivered, value $443.56. United Fruit Co. offers $38 in full settlement.

Case 7596, lost or short delivered, value $1,300. Ward Line offers $100 in full settlement.

LIST A, THEFT AND PILFERAGE—CLAIMS FROM JANUARY TO JULY, 1921.

Angulo & Toraño, Habana: Case 7181, *Lake Fischer*, October 4, 1920; insurance company paid $214.88; 1 piece stolen while in transit from New Orleans to Habana.

Rafael Pérez, Habana, Cuba: Case No. 6649, *Pastores*, May 27, 1920; insurance company paid $1,610.06; 5½ pieces of goods stolen while in transit from New York to Habana.

Pérez, Alea & Co., Santiago, Cuba: Case 7145, *Lake Wimico*, October 8, 1920; insurance company paid $1,519.20; 7 pieces stolen while in transit from New Orleans to Santiago.

Stella, Hnos, Barranquilla, Colombia: Bale 6648, *Tivives*, May 21, 1920; insurance company paid $338.61; 3 pieces stolen while in transit from New Orleans to Barranquilla.

De Rosa & Davino, Cali, Colombia: Bale 7216, *Parismina*, October 25, 1920; insurance company paid $421.88; 2 pieces stolen while in transit.

Malluk Hermanos, Cartagena: Bale 7634, *Lake Gilboa*, November 12 1920; insurance company paid $320.13; 3 pieces stolen while in transit.

Garcia & Dominguez, Habana: Case 6916, *Lake Fischer*, November 12, 1920; amount claimed for $1,350; apparently lost after landing in Habana.

Alvarez Menendez & Co., Habana: Case 6747, steamship *Excelsior*, Southern Pacific, June 14, 1920; amount claimed for to insurance company, $977.78; stolen in transit from New York to Habana.

Henrique Helphen & Co., David, Panama: Bale 8147, *Carrillo*, January 21, 1921; amount claimed for $280.50; 3 pieces pilfered while in transit; claim presented to United Fruit Co.

M. Bellon & Co., Mexico City: Case 6871, *Gonzaba*, October 2, 1921; amount claimed for $376.64; 5 pieces pilfered in transit.

P. Ricahaud & Co., Puebla, Mexico: Case 6870, *Gonzaba*, October 2, 1920; amount claimed for $270.88; 3 pieces stolen while in transit from New Orleans to Vera Cruz; Gulf Line.

Rivera & Co., Cartago, Costa Rica: Case 7976, *Ulua*, December, 1920; amount claimed for $225.16; in transit from New Orleans; 3 pieces stolen.

Enrique Gallego, Mexico City; Case 7905: Steamship *Munorway;* amount claimed for $1,382; in transit from New York to Vera Cruz.

LIST B, NONDELIVERY—CLAIMS FROM JANUARY TO JULY, 1921.

Pelaez & Caicedo, Cali, Colombia: Bale 6104, *Carrillo*, February 23, 1920; insurance company paid $350; steamship company paid to insurance company $25.33; bale lost by United Fruit Co. between New York and Colon.

Juan Rosero, Pasto, Colombia: Bale 5062, *Turrialba*, April 25, 1919; insurance company paid $600; steamship company acknowledged liability of $8 per cubic foot, not to exceed $100; bale lost by United Fruit Co. between New York and Colon.

Román Martinez Hnos, Santiago, Cuba: Case 6914, *Korsfjord;* insurance company paid $1,700; steamship company offered $50; case lost by steamship company between New Orleans and Santiago.

Rafael Pérez, Habana, Cuba: Case 6749, *Excelsior*, June 12, 1920; insurance company paid $3.400; Southern Pacific lost case between New Orleans and Habana; offered $50 in settlement.

Gomez Hermanos, Cartagena, Colombia: Bale 7361, *Lake Wimico*, November 24, 1920; amount claimed for to insurance company, $494.92; United Fruit Co. lost bale in transit to Cartagena; offered about $50 to settle.

Diez & Co., Vera Cruz, Mexico: Bale 6993, *Neptune*, August 24, 1921, voyage 16; amount claimed for to insurance company, $500; Ward Line lost bale in transit to Vera Cruz; offered about $50 to settle.

Block Hermanos, San Salvador: Bale 6624, *Calamares*, May 22, 1920; amount paid by insurance company, $443.56; amount paid by steamship company to insurance company, $38; United Fruit Co. lost bale in transit from Colon to Salvador (Pacific Mail).

Javelly & Richaud, Guadalajara, Mexico: Case 7596, October 19, 1920, *Helmer Morch;* amount claimed for, $1,300; steamship company lost bale in transit; offered $50 to settle.

Jose Grimaldi, San Salvador: Bale 7847, *Calamares*, November, 1920; amount claimed for to insurance company, $1.032.04; steamship company offers to settle for $50; bale lost in transit.

Francisco J. Pimiento, Barranquilla, Colombia: Bale 7848, nondelivery, steamship *Lake Gilboa;* amount claimed for, $800; Tropical Steamship Co. lost bale in transit; offers to settle for 50/100.

Signoret & Reynaud, Mexico: Case 7588, *Helmer Morch*, November, 1920; amount claimed for to insurance company, $2,800; New York & Cuba Mail Steamship Co. offers to pay 50/100 to settle.

Enrique Gallego, Mexico: Case No. 3, *Wacouta*, $800; lost by steamship company, New York & Cuba Mail Steamship Co.; no settlement offered as yet by steamship company.

We have no record of losses or theft in shipments insured under consignee's own open policies. The above claims refer to shipments insured by ourselves.

We have several tracers on other shipments which as though deliveries have not been made by steamship company, but have no documents yet.

Mr. HILL. In regard to nondelivery, this is the record of our claims of outward-bound freight, showing you the increase in claims—railroad claims—on our domestic business only.

(The paper referred to follows:)

Outbound only railroad claims.

	Pennsylvania.	Erie.	Baltimore & Ohio.	Total.
1903	$35.43	$116.95	.....	$152.38
1904	598.33	87.37	.....	685.70
1905	143.03	.....	.....	143.03
1906	572.64	.....	$4.50	577.10
1907	2,028.52	325.85	.....	2,354.37
1908	488.45	.....	.....	488.45
1909	145.50	.....	8.00	145.50
1910	305.87	257.04	43.59	606.50
1911	308.36	91.55	202.50	602.41
1912	1,649.89	135.97	192.71	1,978.57
1913	1,122.87	15.15	40.72	1,178.74
1914	1,236.07	62.63	.....	1,298.70
1915	41.82	413.38	.....	455.20
1916	3,245.72	1,999.21	16,947.27	22,219.20
1917	9,631.76	593.68	2,039.10	12,264.44
1918	954.62	2,402.04	6,804.80	10,161.46
1919	4,514.44	6,786.27	3,347.88	14,648.59
1920	20,560.16	6,937.26	3,277.67	30,775.09
1921	2,724.27	638.31	264.73	3,629.31

Mr. HILL. On merchandise that is overcarried or nondelivered the question is very serious. It seems to us so serious that unless we can have some guaranty as manufacturers and exporters—that unless we can have some guaranty that when we pay our money the recipients of that money shall be responsible for whatever they undertake—the railroad companies of this country are responsible when they accept freight and the freight is paid; the coastwise vessels are responsible likewise, and anybody who accepts merchandise and accepts money for taking care of that merchandise, or to undertake delivery of that merchandise, is responsible, and I think that the time has come when steamship companies should be no different in that respect than any other companies. It is common law, and the introduction of this clause 21 is simply the defeat of common law. It defeats the purpose of a man accepting money and a steamship company accepting rates provided for service to be done. The services are not done and they are held through this clause 21 to be free from liability.

Another point that I would like to make is this, that if a company accepts merchandise and does not deliver it, as in the case of that exhibit, where we have at least, I think, 12 cases of merchandise, each case being over the value of $1,000, and in some cases running to $3,000, for the steamship company to turn around and say, "We are sorry; we have traced this merchandise but can not prove delivery. Our liability is $100"—for them to do that, sir, is, to say the least, evading responsibility, and the matter has been tested—we have had it up with our counsel, and counsel informed us that we have no remedy; that if we accept this bill of lading as it is that it is good law. Therefore we must ask for a change of the law and must ask that the carrier shall be put in a position as other individuals; that it shall not be possible for him to make it profitable to not deliver merchandise and pay a minimum amount under his liability clause.

As individuals, sir, as a firm, we have done all that we possibly could. We have watched our shipments from Cleveland, Ohio, to

New York; we have watched them from the terminal to the steamship; we have covered them absolutely as far as possible, and in spite of all the care that our firm can take we have not been able to prevent these enormous losses which our company has sustained.

This morning I heard various gentlemen who were speaking in regard to their claims, and I have one before me in regard to a case of merchandise that was not delivered to the port of Vera Cruz, and this is a letter received from the steamship company:

FROM THE WARD LINE,
New York, July 2, 1921.

Claim 20, S. S. *Monterrey*, voyage 238.
Messrs. J. D. SMITH & Co.,
17 Battery Place, New York City.

GENTLEMEN: In reply to your favor of the 27th ultimo, with reference to the above claim, which covers the alleged short delivery at Vera Cruz of one case of woolen piece goods, marks, A. L. S. & Co., Mexico City, D. F., 8062, exceedingly regret to advise that our efforts to date to locate this case have been unsuccessful. The case appears to have been duly loaded into the steamer and our tracers to other points of call have failed to locate this case. We are therefore of the opinion that the alleged nondelivery is due to the contents of the case having been stolen and the casing broken up, leaving no trace, and as we believe that your insurance covering this shipment included the risks of pilferage and/or theft, we would respectfully suggest that this subject be brought before the attention of your insurance underwriters, who, if they deem it necessary, will take up the matter with us directly.

Yours, very truly.

WILLIAM IMLAY, *General Claim Agent.*
Per H. H. JENNINGS.

There is a direct case in which they acknowledge their liability; they acknowledge having received the merchandise, and the total amount that the insurance company can collect from this steamship company is $100. The value of that case is $2,320.

I do not want to seem unduly severe with the steamship companies. They have their troubles, but I do want it to be laid down axiomatically that if the steamship company accepts freight and charges its price for the certain service of carrying and delivering that freight, that responsibility shall go therewith. That is the point that we all feel should be clear.

There is one other point that I would like to make, gentlemen, and that is that the collection of our claim, if we are successful even in collecting it, is a very poor satisfaction to our customer. He does not want the money; what he wants is the merchandise; and when he fails to receive that, if we are successful in obtaining payment of the claim it is merely consolation, and nothing else. It does not by any means cover his loss of profit or the money that he might have made had he received the merchandise.

For your information—and I would like to be as fair as possible—I would draw your attention to the fact of the improvement in the situation. There is an improvement this year. Apparently the criminal gangs are being controlled to some extent, because our total claims on our interstate commerce here only are up to date $3,629, as against practically $12,000 for last year.

Mr. EDMONDS. Are you doing as much business?

Mr. HILL. We are not doing as much business, but we have done within 75 per cent of it this year of what we did last year.

Mr. EDMONDS. Has there been any improvement in the ocean carrier situation?

Mr. HILL. That is very hard to say, because the ocean business, the foreign business, has been so small. Practically since the end of December we have shipped no merchandise abroad.

Mr. EDMONDS. Is that on account of your insurance rates being so high?

Mr. HILL. One of the chief reasons is that the merchants have been stung, shall I say—to use an inelegant phrase—have been "stung" by the losses that they have sustained through theft and pilferage, and they do not want any more merchandise if they are going to be penalized by suffering a loss by theft and pilferage. It is true that other nations have the same difficulties as we have, but they are able to get more from the steamship companies and more from other companies than are American merchants and manufacturers.

I believe that if we are going to maintain our export business; if we are going to anything like maintain it, we have got to not only have a square deal ourselves, but we have got to give our customers a square deal in regard to this theft and pilferage business. It has got beyond the control of any one merchant or any one manufacturer, and therefore it is with pleasure that I see that the Government is taking hold of this thing, because it has grown to such dimensions that only the Federal Government can do anything in the matter.

I think that is about all the testimony that I can give. If there is anything else that I can be of service to the committee on at any time or in any way I shall be very glad to give figures or procure figures for you.

Mr. EDMONDS. Does any gentleman desire to ask any questions of the witness?

Mr. KIRKPATRICK. I want to ask one question. Do you insure all these foreign shipments now?

Mr. HILL. We do.

Mr. KIRKPATRICK. You do not ship anything that is not insured?

Mr. HILL. No; we do ship stuff that is not insured.

Mr. KIRKPATRICK. What percentage of the foreign shipments do you insure?

Mr. HILL. Probably 75 per cent of the foreign shipments we insure for the customer's risk. But do you know how that works out?

Mr. KIRKPATRICK. No; I do not. I would like to know.

Mr. HILL. May I take the committee's time for one moment to explain?

It works out like this, gentlemen: If you are in Peru, for example, and you order merchandise from me and you instruct me to insure it and I ship it and you do not receive it, you send me back the papers and you tell me to collect the insurance. In other words, you do not pay for the merchandise at all; you leave it up to me to collect the insurance. Even though it be clearly understood that the merchandise is sold f. o. b. New York, it does not make any difference; the customs of the trade, the sentiment in the country and of the customer is such that he says, "Here are the papers, now collect the insurance."

Mr. KIRKPATRICK. About 25 per cent you do not insure?

Mr. HILL. About 25 per cent we do not insure. That is left to the customer's open policy.

Mr. EDMONDS. Does the customer insure in that case on an open policy?

Mr. HILL. They have their own open policy in that case. In such cases we demand a written statement from them saying that they have their own open policy number so and so with such and such a company, in order that we may know for sure.

Mr. EDMONDS. Then they are all insured, virtually?

Mr. HILL. They are all insured.

Mr. EDMONDS. The whole 100 per cent is insured one way or the other?

Mr. HILL. Yes, sir.

Mr. LOINES. You said that you began to strap and wire your boxes at a certain time. Do you know when you began that practice?

Mr. HILL. We have done that practice from the time we commenced the export business—always. We have also made our own cases and our own boxes, and we have also strapped them.

Mr. LOINES. Have you so far suffered more from nondelivery of packages or from pilferage?

Mr. HILL. In value of money from nondelivery, because then the whole case goes, while in the case of pilferage only part of the case is stolen.

Mr. HICKOX. May I ask one or two questions?

Mr. EDMONDS. Yes, sir.

Mr. HICKOX. In the case of this package that was valued at $2,300, did you declare the value to the carrier when you got your bill of lading?

Mr. HILL. No; we do not. It is not our custom to do so unless it is specified by the customer, or unless there is some special reason for doing so.

Mr. HICKOX. And you have the option under your bill of lading of declaring the value and paying freight accordingly, have you not?

Mr. HILL. All of our merchandise is first-class freight. We are manufacturers of fine worsteds, worsted cloth, and all of our merchandise is exported and accepted by the shippers as first-class freight, and we pay the first-class rate.

Mr. HICKOX. The question I asked was that if you had declared the value you had the option of declaring the value and paying freight on it, did you not?

Mr. HILL. The question of the option of declaring the value is one that sometimes arises. It has never been customary to do so.

Mr. HICKOX. No; but what I want is the fact of whether under the bill of lading you could have done it if you wished to do so?

Mr. HILL. We could have done it if it had been demanded, but paying first-class freight as we do, we do not believe it is necessary to take further precuations than that. We think that is sufficient.

Mr. HICKOX. Just one thing more. In what countries do you find that the shippers receive a greater amount from the steamship companies in the event of loss, nondelivery of packages, than they do in this country?

Mr. HILL. I did not get that question clearly, sir.

Mr. HICKOX. You stated that in other countries merchants got more from the steamship companies on claims for damage and short delivery than they do in this country?

Mr. HILL. Yes, sir.

Mr. HICKOX. I ask you in what countries is that true?

Mr. HILL. In England, for instance. I think the English bills of lading, so far as I have seen them—and I have seen a number of them—will pay as much as $1,000 per package.

Mr. HICKOX. With the exception of two bills of lading that were mentioned this morning, is it not a fact that the ordinary bill of lading, the English bill of lading, contains a limitation of not more than 20 pounds to the package, and that that has been so for years?

Mr. HILL. I do not think that is correct.

Mr. HICKOX. Are you familiar with English bills of lading?

Mr. HILL. I am not so familiar with English bills of lading as I am with American bills of lading, naturally, because I am an American exporter.

Mr. EDMONDS. I would like to ask you a question myself right in that regard.

What would be the difference—will you tell the committee what would be the difference if they had declared the full value of the package when it was shipped as first-class freight?

Mr. HICKOX. I do not know what the particular steamship company's rates were, but if they shipped a package that was really worth $2,300 and they received a bill of lading which said that the freight rate was largely regulated on the value of $100, why then I say that the shipper was not dealing squarely with the steamship company and that if the true value had been stated, the shipper could and should have paid an additional freight rate based on that additional value.

Mr. EDMONDS. Now, in your freight rates you have classes A, B, C, and D. I have seen them myself published in the papers, and your highest rate is class A. Now, if this is class A, you would not charge any more if it was worth $1,000 or $2,300, would you?

Mr. HICKOX. Oh, yes; you would. If anybody chose to ship any specially valuable kind of merchandise, he would be expected to pay, and he does pay in the trade normally, a freight rate commensurate with the value of the package.

Mr. EDMONDS. What does he get for it? He gets no guaranty.

Mr. HICKOX. Yes; he does. He gets a value stated in his bill of lading, which is the value of the package, and its value is the limit of the carrier's liability.

Mr. EDMONDS. But it is the value that you folks will allow him to insure for. You won't pay any more than your $100 anyhow.

Mr. HICKOX. Certainly we will. The limitation of $100 is then out, and the limitation of the carrier's liability in this particular case would have been $2,300.

Mr. EDMONDS. You mean to say that if he had put the value of that package in his bill of lading, you would wipe out that clause and say you would not limit your liability to $100?

Mr. HICKOX. Exactly. That is exactly what I do say.

Mr. HILL. What rate would they charge us?

Mr. HICKOX. Well, you will have to ask the traffic man of the particular line. I can not tell you that.

Mr. LEHLBACH. As I understand it, the traffic people here that have testified said they spent two or three weeks trying to ascertain what such a rate would be. The agents of the company said they could not give them such a rate, and in rare instances when they did get such a rate it was absolutely prohibitive.

Mr. HICKOX. I think you will find if you interrogate the steamship people that there has never been the slightest difficulty in finding out what the additional rate is to be.

Mr. HILL. That is not the case, sir. There is always a great deal of difficulty.

Mr. HICKOX. The steamship people here will be able to speak for themselves on that point.

Mr. EDMONDS. All right, we will let the witness go, then.

Mr. CAMPBELL. I would like to ask the witness to read into the record clause 21 of the bill of lading to which he refers, so that we may have it.

Mr. HILL. Clause 21 in this particular bill of lading reads as follows.

Unless a higher value be stated herein, the value of the goods does not exceed $100 per package, nor $8 per cubic foot, and the freight thereon has been adjusted on such valuation, and no oral declaration or agreement shall be evidence of a different valuation. In computing any liability of the carrier in respect to the goods, no value shall be placed thereon higher than the invoice costs, including freight prepaid hereunder, not exceeding $100 per package nor $8 per cubic foot, nor such other value as may be stated herein. Nor shall the carrier be held liable for any profits or increase of price or value over such cost not exceeding the said value, nor any special or consequential damage, and the carrier shall always have the option of replacing any lost or damaged goods.

Mr. KIRKPATRICK. Right there—suppose you do value them at their real value, you still have every other single restriction of the bill of lading to get past before you get a recovery, do you not?

Mr. HILL. Yes, sir; we do.

Mr. KIRKPATRICK. That is the only one that is obviated by your declaration of value?

Mr. HILL. It has always been the custom, sir, that when merchandise pays the first-class freight rate, that has been supposed to cover—to be sufficient for any freight or any other services rendered.

Mr. EDMONDS. That limits the liability also to class B and class C.

Mr. HILL. I do not know about class B or class C. All of our merchandise is first-class freight, and we never question anything else.

Mr. EDMONDS. I think class C is also package freight, is it not?

Mr. HILL. I think it is, under certain conditions.

Mr. EDMONDS. C and D are bulk freight.

Mr. HILL. I think C and D are bulk freight. But with those I have had little experience, because we are not in that class of business.

Mr. EDMONDS. I suppose on a load of coal they limit the liability to $100? [Laughter.]

Mr. HILL. Here is an interesting photograph, sir, showing how we sell our merchandise in some of the inaccessible places of South America. That is a photograph of our traveler carrying our samples. [Showing photograph.]

Mr. EDMONDS. Is that you going up there?

Mr. HILL. No; that is my salesman.

Mr. EDMONDS. We are very much obliged to you for your testimony, Mr. Hill.

Is Mr. Englar present? We will hear you now, Mr. Englar.

STATEMENT OF MR. D. ROGER ENGLAR, REPRESENTING THE TRADE PROTECTIVE ASSOCIATION.

Mr. ENGLAR. Mr. Chairman and gentlemen of the committee, I appear here as counsel for the Trade Protective Association, which has just been formed, and, unfortunately, this meeting came on a little early for us because we are not yet incorporated. The purpose of this association is to bring about cooperation between shippers and underwriters, with a view to reducing losses by theft and pilferage. The membership of the association is made up principally of various trade bodies, three of whom are represented here this morning by three of the speakers. Their purpose is to combat these losses, not only by bringing about legislation but by practical steps in the way of packing, bringing about convictions, and all other means which will tend to discourage theft and pilferage.

I shall address myself entirely to the legal aspects of the situation. I am not going into the merits of it, which have been so fully discussed. And in that connection I would like to ask if I may have put into the record a resolution and memorandum in support of that which I have filed with the chairman by letter. I will give you a copy, Mr. Campbell. I prefer not to read them, because my time is limited, and I will give Mr. Campbell a copy and he can answer it as he sees fit. I would rather spend the time that I have in discussing the strictly legal aspects.

Mr. EDMONDS. It may be placed in the record at this point.

The paper referred to follows:

MEMORANDUM IN SUPPORT OF RESOLUTION PASSED BY THE TRADE PROTECTIVE ASSOCIATION ON JUNE 29, 1921, INDORSING THE PROPOSED AMENDMENT TO THE HARTER ACT.

The first two sections of the act of February 13, 1893, commonly known as the Harter Act, provide in substance that the master or owner of any vessel transporting merchandise to or from a United States port shall not insert in any bill of lading or shipping document any clause, covenant, or agreement whereby their obligation

"To exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided."

The third section of the act provides, in substance, that if the owner of such a vessel has used due diligence to make her seaworthy, properly manned, equipped and supplied, neither the vessel nor her owners shall be responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel.

The intent of the act is perfectly clear: The shipowner is made responsible for the seaworthiness of the vessel when she begins the voyage, and for the proper handling, custody, and delivery of the cargo; these are things which are presumably within the shipowner's control. On the other hand, the shipowner is relieved from liability for the navigation and management of the ship while she is at sea and beyond his personal control.

During the last 25 years, however, the act has been whittled away by the courts until it no longer fulfills the purpose for which it was obviously designed. This result has been produced principally by the following clauses, which have been inserted in bills of lading and sustained by the courts:

(1) Clauses placing an arbitrary and wholly inadequate value upon the goods shipped, as, for example, $100 per package. (Pierce Co. *v.* Wells, Fargo & Co., 236 U. S., 278; Reid *v.* American Express Co., 241 U. S., 544; Leyland & Co. (Ltd), *v.* Hornblower, 256 Fed. Rep., 289.)

(2) Clauses requiring claims to be filed and suits to be brought within some fixed period.

A very common clause of this character requires claims to be filed before the goods are removed from the custody of the carrier. The courts have not only sustained this clause, but have held that signing for goods as in damaged condition is not a notice of claim within the meaning of this provision. As goods are usually received by truckmen or lightermen, who have no knowledge of such technicalities, this clause acts as a bar to many thousands of meritorious claims each year. (The Persiana, 185 Fed. Rep., 396.)

(3) Clauses casting the burden of proof on the consignee.

Most bills of lading contain provisions which, either directly or indirectly, cast on the consignee the burden of proving the negligence of the carrier. As the consignee usually does not know and can not find out how his goods were damaged, it is seldom possible for him to ascertain or prove that they were damaged by the carrier's negligence. The carrier, who has the custody of the goods and who usually is the employer of all the available witnesses, should have the burden of proving how the goods were damaged and showing that they were not damaged by his negligence. Clark et al *v.* Barnwell et al, 12 (How.) U. S., 272.)

(4) Clauses providing that the carrier shall have the benefit of the shipper's insurance.

Although this clause has been upheld by the courts, the shipper's underwriters have been able to nullify it by proper provisions in their policies. The result has been, however, to make insurance policies very much more complicated, necessitating loan receipts, etc. (Luckenbach et al *v.* W. J. McCahan Sugar Refining Co. and the Insular Line, 248 U. S., 139.)

Through the instrumentality of the clauses above discussed, ocean carriers have almost entirely defeated the purpose of the Harter Act. Unfortunately, the courts have not construed this act liberally as a remedial statute but have been inclined to take a narrow and technical view of its terms. As an original proposition, we think it is difficult to maintain that a clause limiting the carrier's liability to $100 for loss of a package worth $5,000 is not one "whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same shall in any wise be lessened, weakened, or avoided." Nevertheless, the courts have so held, and the only way to change this rule is by legislation.

The enormous increase in losses from theft and pilferage during recent years has correspondingly increased the importance of this subject. Under present conditions, it is actually cheaper for carriers to pay damages at the agreed valuations than to pay for adequate protection of valuable goods. It is the belief of those who have made the most thorough investigation of the subject that the only way to correct the appalling conditions which exist to-day in respect of theft and pilferage is to impose the responsibility for such losses on the only interest which is in a position to prevent them—i. e., upon the carriers. The fact that such losses are now borne by cargo underwriters affords no answer to the difficulty; for cargo underwriters can only pay losses out of premiums, and, in the long run, the losses are borne not by the underwriters but by the shippers and consignees. Furthermore, the risk of theft and pilferage has now reached such serious proportions that any further increase in the losses may render it impossible to get insurance.

Respectfully submitted.

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Counsel for the Trade Protective Association.

Minutes of a special meeting of the Trade Protective Association, held in the board room of the National Board of Marine Underwriters, at 44 Beaver Street, in the Borough of Manhattan, city, county, and State of New York, on June 29, 1921, at 2.30 p. m.

There were present: Merchants Association of New York, L. H. Bonn, H. B. Twombly; National Association of Manufacturers, Mr. Stackpole, representing Mr. M. Gonzales; Tanners' Council, Mr. Lee, representing Mr. Mitchell; Wilton Manufacturing Co., W. S. Poor; Export Managers' Club, Mr. Golden; American Manufacturers' Export Association, Mr. Erb, representing Mr. Downes; American Exporters' and Importers' Association, P. L. Guiterman, Allerton D. Hitch; American Institute of Marine Underwriters, Hendon Chubb, Benj. Rush, H. H. Reed; Harrington, Bigham & Englar, D. R. Englar; A. R. Lee & Co., A. R. Lee.

Mr. Reed acted as chairman of the meeting and Mr. Driver as secretary.

The meeting having been called to consider the advisability of amending the Harter Act and Cummins Act, the discussion at the meeting was confined to this subject. Various amendments were considered and discussed, including Senate bill No. 327, introduced by Mr. MacKellar on April 12, 1921. After full discussion and deliberation the following amendments were formulated:

PROPOSED AMENDMENT TO SECTION 1 OF THE HARTER ACT OF FEBRUARY 13, 1893, 37 STATUTES AT LARGE, PAGE 445, CHAPTER 105.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section 1 of the act entitled "an act relating to navigation of vessels, bills of lading, and to certain obligations, duties and rights in connection with the carriage of property," approved the 13th day of February, 1893, which reads as follows, to wit:

"That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping documents any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

be and the same is hereby amended to read as follows:

"That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports, to insert in any bill of lading or shipping document, any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge, *or shall have the benefit of any insurance effected by the shipper or consignee thereof, or whereby his, its, or their liability shall be limited to any sum less than the full actual amount of such loss or damage, notwithstanding any agreement purporting to fix the value of such merchandise or property at a sum less than its actual value, whether in consideration of a reduced rate of freight or otherwise. In the event of loss or damage, the burden of proving freedom from negligence shall be upon the vessel and her owner.*

"*Notice of all claims for loss or damage visible from a superficial examination of the merchandise or of the barrel, box, bale, package, or other container holding the same, shall be given the carrier before removal from the dock; but a notation on the receipt given for any goods or merchandise to the effect that the same are in damaged condition shall be deemed sufficient notice of claim. Notice of all claims for loss or damage discoverable only by opening the barrel, box, package, bale, or other container, shall be given the carrier within a reasonable time after the delivery of the merchandise to the receiver thereof, such reasonable time being determined by the nature of the merchandise transported, and the circumstances of each case.*

"*No clause shall be inserted in any bill of lading or shipping document whereby the time within which suit must be brought against any vessel or carrier, subject to the provisions of this act, shall be limited to a period of less than one year.*[1]

"Any and all words or clauses inconsistent with this section inserted in bills of lading, or shipping receipts, shall be null and void, and of no effect."

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[1] Italics indicate new matter.

PROPOSED AMENDMENT TO THE CUMMINS ACT OF AUGUST 6, 1916.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of an act to amend an act entitled "An act to amend an act entitled 'An act to regulate commerce (approved Feb. 4, 1887), and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,'" approved the 9th day of August, 1916, which reads as follows, to wit:

"*Provided, however*, That the provision hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property except ordinary live stock received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'Ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

be and the same is hereby amended to read as follows, to wit:

"*Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit the liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation: *Provided further, That where loss, damage, or injury occurs to property delivered to any common carrier, railroad, or transportation company, the burden of proving freedom from negligence shall be upon such common carrier, railroad, or transportation company, and where such loss, damage, or injury results from the negligence of the common carrier, railroad, or transportation company it shall be liable for the full actual loss, damage, or injury, and shall not have the right to limit the amount of recovery against it to any declared or released value of such property.*[1]

"The term, 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

Upon motion of Mr. Twombly, duly seconded by Mr. Hitch, the following resolutions were adopted:

Resolved, That the proposed amendments to the Harter Act and Cummins Act here formulated, and set forth at large in the minutes of this meeting, will

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[1] Italics indicate new matter.

tend materially to check the unprecedented and still increasing volume of losses by theft in transit, which now constitute such a serious burden upon the commerce of this country. And be it

Further resolved, That the said amendments will constitute an important step in the direction of those reforms in transportation for the promotion of which this association was organized; and that similar beneficial results can not be obtained under any system which depends for its efficiency upon a supposed option to the shipper as between a released bill of lading and one which subjects the carrier to full liability. And it is, therefore,

Further resolved, That this association hereby adopts and approves the said amendments and that the various trade bodies affiliated with this association be requested, through their members here present, actively to support these amendments, not only by resolutions, but by personal and active support before such congressional committees as may have occasion to consider legislation affecting the liability of carriers. And to this end, it is

Further resolved, That the chairman be, and he hereby is, authorized and directed to send to each of such affiliated bodies, a copy of this resolution, together with a letter to be formulated by the chairman, explaining in greater detail the purpose of this resolution and the reasons for supporting the said amendments.

Mr. ENGLAR. There are several general observations that I want to make. One is as to the scope of the investigation of this committee. Of course, there is no limit to the scope of such an investigation, and some of the reforms suggested here would be very far-reaching. I do not wish to be understood as expressing disapproval of any of those plans, because they are constructive, and if they are feasible I should be heartily in favor of them, but I do want to point out particularly the very little change that need be made in the law to bring about the particular reforms to which most of the addresses have been directed. What I fear is that under the guidance that the committee may have to-morrow the investigation may be led off in pursuit of some utopia, and we may overlook the particular thing, the one small step perhaps, that we might take, without breaking much new ground.

Mr. EDMONDS. If it is a cool utopia, the committee will be led there very readily. [Laughter.]

Mr. ENGLAR. Most of the addresses here have been directed to a proposed amendment to the Harter Act. The resolution which I have filed with the committee embodies a proposed amendment of the Harter Act. The changes in the law that are set forth in that amendment are directed at the four abuses which have grown up under the Harter Act, and they have all been referred to here. I simply want to bring them together and direct the attention of the committee to the present state of the law. I think there is a case where the committee should have before it exactly what the law is to-day, because, otherwise, I think they are likely to get a false idea as to the magnitude of their task. In other words, I think it is not nearly so difficult for them to bring about the particular reforms that they favor as it might appear from some of the discussions here.

For example, in these bills of lading that have been read into the record there are many very burdensome clauses, but the fact is that those clauses are, to a very large extent, void under the present law. I may not have an opportunity to go into this fully, but Mr. Laws, of Philadelphia, is here, who is thoroughly familiar with the present law, and I trust that he will have a chance to go into it more at length.

I want to say, briefly, that the Harter Act, the act of 1893, was, in my opinion and in the opinion of a great many people who considered it, intended to accomplish just what we ask the committee now to bring about. Its effect has been very largely nullified by court decisions. Where you have an exception in the bill of lading, for example, against loss by leakage, that exception is invalid in so far as it applies to leakage due to the negligence of the carrier. In other words, if you demonstrate that the barrels were not properly stowed, the exception is void as to any damage that results from that cause. That is covered by count also. The precise effect of that exception is one, I think, that you should have in mind, because that does have an effect, because it does not protect the carrier from leakage due to negligence. It has this effect, that if when merchandise gets to its destination and there is a loss by leakage, the fact that there is an exception of leakage in the bill of lading casts on the consignee the burden of proof of negligence.

In other words, the courts state that the carrier is liable for his own negligence or the negligence of his servants, even with this exception in the bill of lading, but that exception has the effect of casting on you the burden of proving his negligence. In other words, if there were in the bill of lading no exception of leakage, all you would have to do would be to prove that the goods were delivered to the carrier in good condition and that when they arrived at destination there was a damage due to leakage. That would be enough. Then the carrier would have the burden of excusing himself. But by having that exception in there, the carrier is in a position to say, "Well, do you think I am negligent? Go ahead and prove it." Of course you can not prove it. You get there and you find your goods on the dock; the ship by that time is perhaps a thousand miles away and you have none of the evidence. The evidence is all in the hands of the carrier, and the result is you can not prove the negligence. Now, that is one of the points that has been mentioned here a number of times, but I shall take up in the order in which I have them in my memorandum the particular clauses which have very largely nullified the Harter Act.

The Harter Act contains three important sections.

The first two sections provide in substance—and I am quoting here from the act—"that no owner or master of any vessel shall insert in any bill of lading or shipping document any clause, covenant, or agreement whereby their obligation"—and here is where I quote from the act—"whereby their obligation to exercise due diligence to properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officer, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in anywise be lessened, weakened, or avoided."

Now, the courts have said that when the carrier says he is only liable for $100 for the loss of a $5,000 package, that does not lessen or weaken or avoid his obligation. I think that is a very arguable question. I do not think the gentlemen who passed that act ever contemplated such construction, but that is the construction the courts have put upon it, and it is a very technical branch of the law. For example, some years ago there was a case in the Supreme Court, the

case of Calderon against the Atlas Steamship Co., where inadvertently the carrier said that he would not be responsible for a package that was worth more than $100. The Supreme Court said, "That is void, because you have said you will not be liable at all if the package is worth more than $100. You can say you will not be liable for more than $100, but you can not say that you will not be liable at all for a package which is worth more than $100." So that was ruled off. That shows you just how technical it is.

On the other hand, although they are very strict in matters of that kind, they are extremely liberal in other aspects. Take, for example, one of the leading cases on this subject is the Pierce Co. against Wells Fargo & Co., in 236 U. S. There a carrier limited his liability—an express company—to $50 in respect of a carload of Pierce Arrow cars, and it was contended that that was clearly unreasonable; that that was not a real valuation; that it was purely a subterfuge; but the Supreme Court said no, as long as it was in the form of a valuation it was good, and as soon as it took a different form it was bad. And in the case of Leland & Co. against Hornblower the point was squarely argued—that was 256 Federal—that these clauses did lessen, weaken, or avoid.

Mr. KIRKPATRICK (interposing). May I interrupt you there? They did not say that the carrier could put the value on, they said that the shipper could.

Mr. ENGLAR. It was presented as the value.

Mr. KIRKPATRICK. But the theory of the decision was that the shipper put this value on.

Mr. ENGLAR. The theory was that the shipper also did.

Mr. KIRKPATRICK. You said the carrier put the value on.

Mr. ENGLAR. I did not mean to say that. I do not mean to mislead the committee at all. The theory on which this is all supported is that the shipper does it. Of course, on no other theory would it be tenable, and I have no doubt that is the contention of the owners; I have no doubt that is what they will say to-morrow—that the shipper does it. They give him a bill of lading with $100 in it, and he values it at $100, and why should he not? Now, I would like to say a word on that point, because that brings up the question of an alternative bill of lading.

It was suggested yesterday by one of the gentlemen who spoke that it would be wise to have two different kinds of bills of lading, and I have no doubt that that will be the argument to-morrow. On that I want to say this: That it is well-settled law in this country that the carrier and the shipper do not stand on an equal footing. The shipper has not freedom of contract. Now, we are talking to-day about the shipper's freedom of contract. It has been the law of this country for 100 years that the shipper has not freedom of contract. If he had, there would be no excuse for us to be here at all; and I say that there is absolutely no difference in this respect between giving the carrier liberty not to assume any liability at all and giving him liberty not to assume more than $100 liability. If you are going to reserve freedom of contract, why is it that the carrier can not say, "Here are two bills of lading. Under one I assume no liability; under the other I assume full liability"? He can not do that. That is well-settled law. It is simply because the courts have recognized,

long before there was any Harter Act, that there is not real freedom of contract and that the shipper is to be protected.

Now, what is the use of saying to a carrier, "You can not exempt yourself from liability, but you can limit it to $100"?

And $100 is not the worst. I had a bill of lading before me the other day—a French bill of lading—where the limitation was 10 francs per package, which at the present rate of exchange would be about 80 cents. Then, to make assurance doubly sure, they said, "But in no event to exceed the amount of freight paid."

Once you open the door for that sort of thing it is certain to be carried to ridiculous extremes. And I will say, although I hold no brief for English shipowners, the English shipowners have shown a little broader vision in this thing, and they have not abused their privileges, I think, as much as have the American lines. They have been a little more reasonable, and they seem to think that it pays to be so.

So much for that valuation clause. I say, if you are going to permit the carrier to limit his liability to a purely fictitious figure, you may as well say that he can have the option of exempting himself from any liability at all; because if you do not, it is just like the case of the young lady who was told she could go in swimming, but she could not go near the water. That is just what it comes down to.

Now, the second is the clause requiring claims to be filed and suits brought within a certain specified time. On the same day that I received notice of these hearings I happened to receive in the morning's mail 12 letters from a P. & I. Club insuring American steamship owners—and they are all form letters. They relate to 12 different claims, and the substance of them all I will quote for the record:

"It is apparent from information obtained that clause 22 of the carrier's bill of lading limiting the time for presentation of claim has not been complied with in this instance, and for this reason we regret most respectfully that we are obliged to decline any and all liability for the steamship company"—naming the company.

There were 12 of those—12 claims simply thrown out because the claim had not been presented within the terms of that clause. That is another clause which really nullifies the intent of the Harter Act, and the courts again have shown a disposition to encourage that, because in the case of the *Persiana* (185 Fed. Rep.), where the question first came up, there were some goods delivered damaged. The man who took delivery of them, naturally, was not a lawyer; he was not even a merchant; he was a lighterman, as I recall—either that or a truckman—and he signed for them damaged. Later suit was brought against the carrier, and they said, "Why, claim was not filed before the removal of the goods," and the consignee said, "Yes; it was. The lighterman receipted for them damaged. He gave me notice that they were damaged." The court said, "That is true, but he did not give the carrier notice of the claim; he only gave notice of damage." So it is wholly impractical under such rulings to preserve your rights, unless you have a lawyer at each pier. That might be worse than the present condition. [Laughter.]

Now, as to the third clause, I covered that at the outset. That is as to burden of proof. We feel very strongly that the burden of

proof should remain on the carrier, because to cast the burden of proof on the consignee is in many cases—in fact, in the majority of cases—to take away any right of recovery. I say that Congress, having laid down in the Harter Act the general principles on which a carrier's liability should be determined, having said, on the one hand, "You can protect yourself in respect of errors in navigation and management," and, on the other hand, "You can not exempt yourself from certain other things," either that should be repealed or you should put some life into it, so that it shall have some effect, and to allow the carrier by subterfuge to sweep all that away is just to bring the law into contempt.

The last clause that I mentioned in my memorandum is the clause contained in most bills of lading, providing that the carrier shall have the benefit of the shipper's insurance. That has been the subject of a long legal fight, and the last few rounds have been won by the underwriters. They have been able, by provisions in their policies, to nullify that clause in the bill of lading. The whole subject was finally passed on by the Supreme Court not very long ago (248 U. S.) in the case of Luckenbach against McGahan Sugar Refining Co., where the Supreme Court upheld a system of loan receipts whereby the underwriters had been enabled to get away from that clause in the bills of lading. The difficulty with that, although at the moment the underwriters have maintained their position, is that it makes a very cumbersome situation. It involves inserting a number of clauses in marine insurance policies—in fact, in some of them, some long policies, about a quarter of a policy is taken up with provisions relating to this way of getting away from the benefit of the insurance clause, and it involves payments on loan receipts and various other cumbersome procedures which should be unnecessary.

We feel that unless those four abuses can be corrected the Harter Act is of very little use to American shippers.

I would like to take up briefly now some of the questions that came up during the discussion, as far as I have heard them. It has been said that this would be a burden on American shipping; that it would be just as much a burden on foreign shipping as on American shipping. The Harter Act is a burden on all shipping that enters or leaves the ports of the United States, because it operates on all of them. They have all acquiesced in it. Most of them have in their bill of lading "subject to the act of 1893," and it does not bear a bit more harshly on American shipping than on foreign shipping, and neither would the proposed amendment.

The clause "not liable for anything that can be insured against" has been held void by the courts. I state that in answer to some question that arose here during the hearing.

Another objection that has been made—of course I shall not be here when the carriers are heard, and I am simply answering such objections as I have gathered from the cross-examination thus far—it has been said that a lot of this loss does not happen when the goods are in the custody of the steamship company. If that is so, so much the better for the steamship companies, because they will only have to pay for what happens while they have the goods. Even after these amendments are made, if they are made, the shipper or

consignee will still have to prove that the loss happened when the steamship company had the goods. He will then have to submit to cross-examination by Mr. Campbell and others, and he will have to state whether he has personal knowledge of what was in the case, and he will have to prove by eyewitnesses every essential fact in order to recover, and if it proves then that the great bulk of these losses do not happen in the custody of the ocean carrier we will at least know where we stand. We can then devote our attention to the truckmen, the lightermen, or whoever does pilfer these goods and steal them. There are two classes of cases certainly where the proof would be easy and where the steamship companies certainly can not object.

That is where they receipt for 10 cases and they only deliver 8. The burden of proof is not very difficult there. Another case is where they receipt for goods in good condition and they come broken—the cases when they deliver them are broken and have the contents gone—where they get a damage receipt. Those two cases would be very easy to prove, and if you can not prove your case you can not recover. So it seems to me that there is no substance in that objection.

Some questions were asked here about uniform bills of lading. There is no uniform ocean bill of lading. There is a conference going on now in London with the idea of bringing about such a uniform bill of lading, and a number of people have gone from this country to attend it. But, of course, if such a bill of lading can be brought about, it will be just by voluntary means, agreement, and I have very little confidence in our ability to reach any such agreement. Furthermore, any bill of lading that can be reached by agreement will not be favorable to shippers. I think the shippers may get some concessions, but they will not get anything like what they require, and it is impossible to conceive of any real reform without legislation.

When the Harter Act was passed, everybody thought that it was a very innocuous act from the standpoint of the steamship companies. It gave them a great deal more than it took away from them. In fact, I never could see that it took anything away from them; nevertheless, it was said then that it was going to ruin everybody, but since then the Canadian Government has passed an act almost word for word identically with it. Similar acts have been passed in Australia and elsewhere, and I want to read one passage from this report which has been referred to, of the imperial shipping commission. It has been referred to a number of times, and I want to read one passage from page 10. [Reading:]

> The view has been expressed to us that in effect shipowners could evade their liability under any of the existing legislations, except perhaps the Canadian act by agreeing to extremely low values for goods with the shipper.

The word "agreeing" is quoted.

> It appears to us that it will be necessary in the new legislation:
>
> 1. To provide for the settlement of a reasonable maximum value as the limit of liability, or probably several such limits for the various trades, and to provide in some way for changes to be made to accord with any altered condition in freights and values.
>
> 2. To prevent evasion of the general liability by any system of low or nominal agreed values.

I read that simply to show that this conception that these arbitrary clauses are an evasion of the present law is not an invention of our own; it is recognized all over the world, and indeed I had the privilege of trying to explain to a number of very indignant French importers, the consignees, how it was that the $100 limitation clause was consistent with the language of the Harter Act which I have just read. The French thought that the Harter Act imposed full liability on the carrier, and they could not understand it. All I could tell them was that the court said so, and that settled it. I have been told, although I have not looked it up—I did not have time to; I had such short notice of this meeting—that the French courts have actually decided, in construing the Harter Act, that those valuation clauses were contrary to the Harter Act, notwithstanding our decisions on the subject. I have not had an opportunity to confirm that. I can only say that I have been so informed, and I have been credibly informed and believe such is the fact. I may be able to get them.

There are a number of countries which have passed laws similar to the Harter Act. That is one of the questions that was asked yesterday. Canada and Australia are among them; also New Zealand.

Mr. EDMONDS. Is there a law similar in England?

Mr. ENGLAR. There is no English law similar.

Mr. EDMONDS. The English have a liability act, though?

Mr. ENGLAR. Nothing similar to our Harter Act. Most of the provisions that are invalid under the Harter Act are valid under English law—not under Canadian or some of the other dominions, but under English law. But in England the decisions show that the courts, in view of the great freedom of contract enjoyed there, have construed those clauses very strictly. In other words, instead of evidencing sympathy for the carrier, they have shown a great deal of sympathy for the shipper, and wherever they could they have held that the clause did not apply. There are some decisions there that go very far, such as deviation clauses. No matter how wide the deviation clause, they hold that it has got to be reasonable. They say that no matter what it says practically, it only means a deviation within a reasonable degree. If you go outside of that, they will not construe the clause intending to cover the case. That is just an illustration.

Now, as to this question of the option that the shipper has—Mr. Campbell asked to have that clause read into the record, no doubt to bring out that it starts off by saying "Unless a higher value is declared." I can not speak from personal knowledge. I am not a shipper, and therefore I can not say from personal knowledge; but I have a good deal of knowledge on that point from clients, and I firmly believe, and I state on information, that ocean carriers do not have any rates for higher values, and that in many cases the declaration of a higher value would not involve any higher rates. In other words, their freight as it stands is high enough to cover this risk. I was in one case myself which went up to the Supreme Court, where we brought out the fact that the rate would have been just the same—that was the shipment of an automobile—and we brought out that the rate would have been just the same if the higher value had been declared; but the Supreme Court says that did not make any difference; that the valuation was there, and that settled it.

Where the carriers have been pressed for rates, it has been testified here, and I believe it to be a fact, that they purposely give prohibitive rates, because they wish to discourage having this extra liability placed upon them. For that, among other reasons—I want to close with one point which I think goes to the root of this whole thing—so long as there is an option for the shipper to take the higher valuation or not to take it, the carriers will make it prohibitive; they will do everything to discourage him from taking it, and it will be a thoroughly impractical system. Once you say that he must take it, competition will take care of the rest. When you tell him that he can not exempt himself from this liability, then the question of what he is to charge for it will be taken care of just like any other item of cost.

What seems to me to be the most dangerous feature of this whole situation is this: I fear that the mechanics of the act—the methods of working it out—will be so confused with the principle involved that the committee may feel discouraged at the difficulties presented. The carriers will undoubtedly cite cases of great hardship to them if they assume these high liabilities. They will point out that they are entitled to additional compensation. I do not think anybody disputes that they are entitled to additional compensation. If they are going to carry these added losses themselves instead of throwing them onto somebody else they are entitled to such compensation as will enable them to absorb that loss. But I say that is an entirely distinct matter. I say that the thing to be settled here is the principle whether or not they should carry these losses.

If they should, there is no difficulty; nobody here is going to put the carriers out of business. They are all very friendly with them, and we want them to do business and have business, and nobody wants to do anything that is unreasonable. I am sure none of these men here expect the carriers to lose money, and once it is determined as a matter of public policy that the carriers should and must carry this risk of theft and pilferage while goods are in their custody everybody will cooperate in working out a system of determining their extra compensation. That is just a matter of working out details. Now, just how that should be done I could suggest myself half a dozen ways, but I am not going to do it. There is no use going into that until it is settled that they are going to carry the losses, but if they are you can protect them. They are entitled to certain protection; they are entitled not to have diamonds and so on shipped as ordinary merchandise. I might point out that they are protected against that now by another section of the Revised Statutes which takes care of precious stones, metals, and so on, but those are details. One thing, for example, I think it would be fair enough to provide that the carrier should not be liable for more than the average value of goods of the description put into the bill of lading. If a man ships woolen goods and it turns out he shipped some rare tapestry, the carrier may be entitled to protection. I am just throwing out those suggestions. I have not given much thought to that aspect of it, because it seems to me it is a point that comes up after you have settled the plain principle involved. The way it is handled on the railroads is they have schedules of different commodities and different rates, and there is no reason why the shipowner should not have schedules. We do not expect them to carry

dress goods or manufactured clothing for the same price that they carry bulk cargoes. I say that is a thing that the committee can take up as a secondary question, because it does not come up until the question of where the loss is to fall has been determined.

Mr. LEHLBACH. Mr. Englar, in discussing certain clauses to be found in bills of lading you said some were void under the Harter Act and others were construed to be valid but were in derogation of the intent of the Harter Act.

Mr. ENGLAR. Yes, sir.

Mr. LEHLBACH. Have you given any thought to this clause which is found in some bills of lading: "The carrier, at its option, shall have all rights and benefits granted to shipowners, permitting a limitation of their liability by the laws or customs of any other State or country in the port of which said vessel may enter"?

Mr. ENGLAR. That is invalid. That has been settled many years ago—that any attempt to provide that a contract of transportation made in this country or for shipment to or from this country should be governed by foreign law is invalid.

Mr. LEHLBACH. I do not know whether you know or not, but if you do can you give us the reason why shipowners, after a clause has been expressly declared invalid by the courts, they continue to insert it in their bills of lading?

Mr. ENGLAR. For the reason that I have explained, sir, that it casts the burden of proof in many instances on the consignee.

Mr. LEHLBACH. Might he in this particular instance—this can not cast any burden of proof.

Mr. ENGLAR. I think Mr. Price explained that. Those are in terrorem. In lots of cases they can scare a man off by that. He doesn't consult counsel, and he just figures that he has no case.

Mr. KIRKPATRICK. Do you know whether the clause requiring notice of damage before receipt of the goods has been held valid?

Mr. ENGLAR. Yes; I referred to the case of the *Persiana*, where it was held that not only was the clause valid, but that signing for goods as damaged was not sufficient notice of claim.

Mr. KIRKPATRICK. Have you any opinion as to what would be a reasonable provision in that respect? There certainly must be some notice.

Mr. ENGLAR. I have embodied one, sir, in the draft of the law which I submitted.

Mr. KIRKPATRICK. Very well: that is all right, then, as long as it is before us.

Mr. ENGLAR. I have covered all four of those points in that law, and have underlined the new part so that it is readily discernible.

Mr. HICKOX. May I ask Mr. Englar a question?

Mr. EDMONDS. Yes, sir.

Mr. HICKOX. Mr. Englar, you have suggested that in England they have not any Harter Act, and perhaps I got a wrong impression from what you said, but I rather gathered that your idea was that the law in England was less favorable to the shipowner than it is in this country.

Mr. ENGLAR. No; you quite misunderstood me. I hesitate to express any opinion as to English law in your presence, sir.

Mr. HICKOX. You have your own associate resident in England, so you need not have any hesitancy.

Mr. ENGLAR. I did not mean to convey that impression, Mr. Hickox. I think the law, generally speaking, is more favorable to the carrier in England, but I said that the English carriers had not shown the same disposition, so far as I had observed, to abuse their immunities that they had shown here, so far as they have them here.

Mr. HICKOX. Well, in England a carrier can contract against the consequences of his own negligence.

Mr. ENGLAR. That is true.

Mr. HICKOX. And here he can not do that.

Mr. ENGLAR. That is very true. He can only contract that he will only pay $100 or $50.

Mr. HICKOX. And when you speak of the carriers not taking advantage of their—or perhaps you put the expression another way; carriers not taking advantage—will you repeat that expression?

Mr. ENGLAR. What I said was that the carriers have not shown the same disposition over there to abuse the privileges conferred on them by law.

Mr. HICKOX. Well, now, when you speak of a carrier abusing his privileges, are you suggesting that he is doing something more than the law says he can do?

Mr. ENGLAR. No. Unfortunately the law permits him to do it, as it now stands.

Mr. HICKOX. Well, there must be some authority, must there not, in the end to determine what is a proper thing to do?

Mr. ENGLAR. That is true.

Mr. HICKOX. And under our system that is the court, is it not?

Mr. ENGLAR. No; I beg pardon, I think the final authority is right here. The courts can do it temporarily, but not finally.

Mr. HICKOX. Exactly, but when the people right here, if you please, or Congress, as in the Harter Act, pass an act, under our system the only conceivable way of knowing what that act means is to leave it to the courts, is it not?

Mr. ENGLAR. That is true.

Mr. HICKOX. And that has been done in this case.

Mr. ENGLAR. That has been done in this case.

Mr. HICKOX. And may I take it that you really disagree with the Supreme Court?

Mr. ENGLAR. No. I am glad you reminded me of that, because I wanted to state on the record that my remarks are not intended in any sense as a criticism of the courts that have rendered these decisions. They are simply following ancient doctrines and principles, which in the past have not become as important as they have recently.

Mr. HICKOX. Well, the question of upholding the limitation of value, which I understand is the subject of your special criticism, is not a matter which comes from the Harter Act at all, is it?

Mr. ENGLAR. No; it does not.

Mr. HICKOX. The Supreme Court, years before the Harter Act was passed, dealt with the question of limitation of liability in a bill of lading, and held that it was a perfectly proper procedure.

Mr. ENGLAR. That is true, but I want to say on that point that in my opinion the gentlemen who passed the Harter Act did not realize that they were allowing that to continue. I think they used unfortunate language.

Mr. HICKOX. That is perhaps a matter of controversy, but, at least, we know this, that when the Harter Act was adopted, which I think you said was also adopted in the same words in Canada—did not the Canadian water carriage of goods act specifically provide that there could be a limitation of $100 a package?

Mr. ENGLAR. That is true, Mr. Hickox, but you will bear me out that the Canadian act was passed years after our act, and after our act had been construed by the courts and they intended simply to follow the Harter Act.

Mr. HICKOX. Yes; and after these things which you complain about were perfectly well recognized.

Mr. ENGLAR. That is true. But I refer you now to the report of the Imperial Shipping Commission, where they point out that this is an evasion of the intent of the law.

Mr. HICKOX. I do not think they do point it out, and I think that it would be very interesting for the committee to read the report of that commission, because that report and what you have quoted is wholly different from any suggestion made by any representative of the shippers or insurance people at this hearing.

Mr. ENGLAR. I beg pardon. One of the gentlemen to-day suggested something very much like that.

Mr. HICKOX. I do not mean to argue with you on the question of what they may or may not have said, but the last witness to-day said that he thought the values should be very largely increased, without any increase in freight rate until you got up to, say, $1,000 a package; and one of the witnesses yesterday said that whether or not the shippers would be willing to pay an additional freight rate if they got some additional liability he could not say until he knew what the freight was. Now, this Canadian—or rather this imperial conference—has recommended that whatever is fair under all the circumstances of the trade should be adopted. Is that not so?

Mr. ENGLAR. You are speaking of this commission here?

Mr. HICKOX. Yes.

Mr. ENGLAR. Yes; I think that is substantially so.

Mr. HICKOX. I think we all agree with that.

Mr. ENGLAR. As I understood the witness's suggestion, it was that the normal freight rate should be sufficient to include liability up to $1,000.

Mr. HICKOX. Well, what these witnesses have all said is that the present freight rate should be sufficient.

Mr. ENGLAR. I did not so understand them. I just want to say—you have provided me with a detail, but I want to mention that in comparing English bills of lading and American bills of lading, this benefit of insurance clause which gave so much trouble for years was an American invention, and even to-day very few English bills of lading, I think, contain it—at least, a great many do not. The English did not take it up originally, and they have been very slow to follow it, even after the Americans introduced it.

Mr. LOINES. May I just ask Mr. Englar one question? You have said that this protective association that you are just in process of forming—not quite formed yet—is for the purpose of cooperation between shippers and underwriters. May I ask if the object of this association is to stop pilferage, or pass the buck to the carrier?

Mr. ENGLAR. It is to stop it.

Mr. LOINES. Why, then, have you not suggested the cooperation of the shipowners?

Mr. ENGLAR. Because until the shipowners have some interest in the matter I do not think there is much hope of getting their cooperation.

Mr. LOINES. You think, then, that they have no interest in the matter now?

Mr. ENGLAR. Their interest is limited to $100 a package. I mean I think they are just as well off under the present situation as they would be under any other. I do not wish to make any disparaging remarks about the shipowners. I know they are interested, but I mean they are not financially interested to any great extent.

Mr. EDMONDS. We will now hear Mr. Nathan B. Williams.

STATEMENT OF MR. NATHAN B. WILLIAMS, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS.

Mr. WILLIAMS. Mr. Chairman, I shall only have a brief contribution to make on this subject, for the reason that I am not anything like as conversant with its details in a legal or commercial aspect as many of those who have presented the subject to you.

I represent, as associated counsel, the National Association of Manufacturers. This association is comprised of about 5,600 American manufacturers, all of whom are either exporters of goods or potential exporters of goods. They represent the introduction of the entire alphabet of fabricated products as produced in this country, from abrasives to zinc. Their interest is widespread, and I think possibly the only contribution I can make to the discussion of this subject is this: Under present existing conditions not only has every American manufacturer engaged in the shipping business an interest as a ship operator, but every taxpayer is likewise engaged as a ship operator. We have Shipping Board vessels in great number, which for a long number of years will be operated, and such deficits as accrue will come from the Public Treasury until such time as they are disposed of to private interests. So this question of pilferage and thievery as respects American goods, both import and export, is one that affects every taxpayer, and it seems is one that is distinctly important to be considered and determined at this time, in order that a proper public policy may be developed.

American manufacturers in 1918 paid 67 per cent of all the income and profits taxes collected by the United States Government, so they have a 67 per cent interest, primary interest, in the development of the American merchant marine, and they expect to pay, and will pay at least originally, that proportion of whatever deficits or thieveries or other losses occur, and that makes the present one of peculiar opportunity for a thorough consideration of this subject, and when you take the particular interest of the shipper, the particular interest of the insurer, or the particular interest of the carrier is in effect one, and unquestionably the fundamental is as to where the particular and peculiar responsibility growing out of the handling of American cargo freight shall lodge, in order that there may be definiteness and certainness with respect to that responsibility and a thorough appreciation of the necessity of adopting all means necessary to protect

that carriage and at the same time develop and promote American commerce and American industry.

"In days of old, when knights were bold," the American Navy was impressed to search the highways of international commerce and free them from pirates. Whether those pirates now exist on the wharves of this country, whether they exist on the wharves of other countries, whether they operate on open steamship lines, or whether they are controlled by private operators, it is a matter in which the public has a direct or proprietary interest. Unquestionably the full resources of the Nation must be turned to a cleaning up of that situation, and protection given to American commerce in order that that sort of thing may be defeated.

I think that is all I have to offer, Mr. Chairman.

Mr. LEHLBACH. Mr. Gonzalez, we will hear you now.

STATEMENT OF MR. MANUEL GONZALEZ, CHIEF LATIN AMERICAN TRADE DIVISION, NATIONAL ASSOCIATION OF MANUFACTURERS, NEW YORK, N. Y.

Mr. GONZALEZ. Mr. Chairman and gentlemen, you have already heard a great deal about this program, and consequently I do not have to enter into so many details in order to carry into your minds the immediate, absolute necessity of correcting the actual conditions in regard to pilferage. You know that that question is not only felt in the United States, but all over the world.

Before the war very few shippers had any idea of asking underwriters to assume the responsibility of any loss from pilferage. As a matter of fact, taking the figures of those times, the amount of money involved in that loss was negligible. But a wave of immorality has flooded the whole world during those years of universal upheaval; the losses have been increasing steadily until they are already insufferable. From zero in 1913 or 1914, they had reached the enormous amount of $10,000,000 in 1920, and from one-fourth of 1 per cent, which was the rate of insurance in those times—and even less than that—it has reached, in many instances, 15 or more per cent. And not only has it reached that high figure, but it has reached the moment in which the underwriter refuses to write any risks on pilferage and theft, in certain instances.

I am in constant contact with our members who are interested in the Latin American trade, because I occupy, in the National Association of Manufacturers, the position of chief of the Latin American trade department. At the same time, I am in charge of information regarding Philippine shipments, in general, and some other matters.

Not long ago, one of our members wrote us a letter asking us to give him advice in regard to fall shipments of shoes he had to make to the Philippine Islands, and he stated that he had already applied to three or four different companies and they had not accepted the writing of insurance, but that one of them had recently consented to the writing of that kind of insurance on one shipment as a trial, at the rate of 10 per cent. As you gentlemen know, the rate of 10 per cent is prohibitive. If we are going to overcharge the merchandise we are sending to the Philippine Islands, on shipments to the Argentine Republic or Uruguay or countries on the west coast

of Latin-America, we will be at a great disadvantage against our competitors, because our prices are higher, in many respects, due to many circumstances, and that increase of 10 per cent on the rate for pilferage will make the buying of our goods prohibitive.

The war, on one side, the excellence of our manufactures, and many other conditions which have taken place during the last few years, have given to the American exporter many important fields where American manufactures are sold nowadays. That is only a part of our fair share in the trade of the world, and if that trade is not going to be able to be sustained on account of difficult conditions which menace that and other fields, on account of theft and pilferage, we have to admit the painful truth that our trade will have to disappear, in great part.

I have here a great many of my companions who will discuss with you the Harter bill. I do not think, according to the invitation I saw on our bureau, that we were asked to come here and discuss the Harter bill. We were asked to come here to give our more or less authorized opinions in regard to means for meeting that terrific condition created by the enormous amount of theft and pilferage.

We were asked to come here to clear up in the minds of the members of the committee the doubts that the committee may have, doing that in response to questions asked us by members of the committee, considering ourselves as expert in those matters.

If we go into the roots of the subject we find that the Harter bill, even taking from it the elasticity, the facility into which it is twisted by the special bills of lading, is not the only remedy, because the roots are more profound, go deeper down, from the wharf of the shipping company to the wharf of the company where the merchandise is going to be delivered.

The merchandise is exposed to theft and pilferage and is stolen, is broken and damaged, from the moment that the merchandise leaves the hands of the manufacturer until the empty case, or only a part of its contents, arrive in the hands of the consignee.

If such is the case, and it is admitted generally by everybody who is acquainted with export trade, it is indispensable to follow that same line and to correct all the defects from the beginning to the end. That does not mean, on the contrary, that I will oppose any arrangement made, so as to take from the Harter bill, as it is to-day, that elasticity which allows it to be twisted. I understand that the Harter bill, if it was solid, would be perfect, because it is just the spirit, the idea, undoubtedly, of the gentleman who presented it to Congress, and of the legislators who decreed the same.

I think if the problem affects as much the manufacturer as the exporter, the land carrier as the steamship company, the brokers, the lighters, and everybody concerned, even the customer himself, all those interests have to be gathered together and put into a single hand, and with iron hand contribute to the destruction of the processes of such theft and pilferage.

That well-known and well-remembered man, Gen. Gorgas, when he was asked to make the Isthmus of Panama a place where laborers could live and where work could be done, in order to carry into practical operation the great work of the opening of the canal, if he had simply advised all the people on the Isthmus to wear con-

stantly day and night wire masks to protect themselves from the mosquitoes, and gloves and other supplies to the same effect, it might have diminished to a great extent the evil of yellow fever or any other of those diseases which were destroying people. But he went to the root of the evil; he destroyed the mosquito at its nest and then he destroyed the nest, so no more mosquitoes could ever be spread in those places, and the yellow fever disappeared.

The same thing has to be done here, gentlemen. The evil is general, and general is the interest also to eradicate that evil, and general has to be the conduct of everybody for the purpose of eradicating that evil. The evil in any form, stealing or destroying or damaging the merchandise, has to be prosecuted and those doing the evil carried before the proper tribunals, convicted, and punished to the full extent of the law. That is the only way to do it, because the rat will keep on eating the cheese if we do not kill the rat.

So I am one of those who thinks that the steamship companies are as much interested as anybody else, because if the trade disappears because of theft and pilferage they will not have any trade to carry. So the interests of all these people—I am talking in the name of the National Association of Manufacturers, and if it is good for the National Association of Manufacturers it is also good for the National Association of Exporters, the National Association of Merchants, and the National Association of Shippers and Steamship Companies—go together, and those interests, with the interests of the authorities of this country, with the great strength of this country and the immense resources of this immense country, have to be all put together into that work to eradicate entirely this evil, which is a shame in a country like the United States of America. We can not do in South America as you can do here. Who has ever imagined that our little countries down there have the strength, have the facilities, have the means to counteract these terrific conditions, as you have? We do say if the French, the Italian, the Norwegians, or any other shippers in the nations of the world establish this responsibility or that responsibility, that is simply what we may call jurisprudence. It can be established here; let us establish it, and let us set the example.

Nobody in the world could eradicate yellow fever until Gen. Gorgas eradicated yellow fever, and his action was the action of the United States of America.

Consequently, a policy, not of criticism but a policy of construction, has to be adopted right away and the absolute cooperation of all forces has to be put into effect.

Among the remedies there is a great list of very interesting things which would tend to eradicate the evil. There is the proposition of rapid delivery from hand to hand so that the merchandise never disappears from the eyes of the interested parties; the sound, strong, healthy warehousing facilities, and safety; the careful, delicate handling, the careful watching and constant watching, and then the responsibility to be passed from hand to hand, according to the person who is in actual physical possession of the goods.

How can I, the manufacturer, be able to follow, step by step, the process of my merchandise when it goes out of my hands into the hands of the land carrier? Then, after it passes out of the hands of

the land carrier, it comes to the steamship company, and after passing out of the hands of the steamship company it gets to the lighter on the other side, and after it comes from the lighter it goes to the wharves on the other side, and from the wharves it goes to the customhouse, and from the customhouse to the truckman, who delivers it to the consignee. All of those steps mean merely the material eyes and material hands to be watched and to be taken care of, and each one of them has to be responsible during the lapse of time for the full value of the merchandise until he passes that merchandise to the next one. As I said before, it is indispensable that we have investigation for any amount; whether it is a cargo of $10,000 or only a cargo of $10, there has to be the investigation and prosecution; everything has to be done, because there is the rat, and the rat has to be killed. And the rat which is stealing now only $10 is the same rat that to-morrow can steal $10,000,000, as it did in the year 1920.

Naturally, as a logical thing, as a common-sense sequence, it comes about that if I am liable for the full amount of the treasure I have received, or for the little amount of the small thing I have received for carrying it part of the way, I will exercise all kinds of diligence and all kinds of care in order to avoid having the liability fall on myself, and I will see, as rapidly as possible, that the liability passes from my hands to the hands of the next man. That is perfectly natural.

Now, it comes to the selection of employees. A man who is liable for large amounts of money not only selects his conductor on the train, or his captain on the steamer, his truckmen, his stevedores, his sailors, everybody—he selects them with great care because it is in the confidence he puts into them that that liability is going to be effective or ineffective, and when there is no responsibility that man simply does not care. That is, he may merely care, he may be sorry for the consequences, as he may feel in regard to the sufferings of his neighbor or friend, and he may exercise that kind of Christian charity, but it does not hurt. But the other hurts, it is in the interest of his pocket, and consequently, as is perfectly human and natural, he does not exercise all the activities and all the energies to avoid such troubles and exercise such Christian charity.

It is also natural that if the liability is established, the men who are exposed to the payment of large sums of money for the destruction or loss or disappearance of goods assigned to their care should obtain from the man who has given those goods over to their care, a better compensation for their trouble. And that is perfectly natural.

Some of my friends are afraid that if such a liability is established or secured by the steamship companies, that the freight charges are going to be so excessive that the damages will stop because of the lack of carriers or because of the enormous amount paid for such carriers. But they have a friend of everybody under conditions like that, and that friend, whom we know perfectly well, is competition. Competition naturally, tends to level those difficulties; and if the rate is excessive and introduces a great deal of money to the carrier, somebody else will step in who will use that rate, and what will build up an enormous and great business? Competition.

But against the two evils—even supposing that the second evil could arise—against these two evils, which do you prefer, the evil of the

closing of markets which have cost the United States so many troubles and so many sacrifices to conquer, or the loss, for the time being, until competition levels the difficulty, of the carrying of the merchandise in American bottoms? Which is preferable, which is more sufferable for the time being, especially at this moment, when we are in the tremendous war of competition, where we are in a second war. The old one was the bloody one, and this is the dollar one; the other was a question of lives, this is a question of merchandise, of trade, of development. It signifies not only the material life, industrial life, and commercial life of this country, but also the future of the country. The countries which sit down beside work to complain about their troubles and do not keep on marching, are countries lost entirely. They have to keep on.

You have already secured good markets. Are you going to abandon those markets at this moment only because there is an evil which has a strong enough hand to create, diminish, and even make disappear.

The National Association of Manufacturers hope you will not abandon those markets and that some remedy will be found by which all those interested will be combined, and all being united will destroy the great evil of which we are complaining.

I thank you, Mr. Chairman and gentlemen.

Mr. LEHLBACH. Is there a representative of the National Association of Credit Men present this afternoon? If not, we will hear Mr. Laws.

STATEMENT OF MR. FRANCIS S. LAWS, REPRESENTING THE INSURANCE CO. OF NORTH AMERICA.

Mr. LAWS. Mr. Chairman, I represent the Insurance Co. of North America, of which Mr. Rush is the president.

I am rather sorry Mr. Englar has gone, because it would be rather comforting to have one lawyer here to agree with what I have to say in regard to the law and the facts. I have not the slightest idea that my learned friend, Mr. Campbell, or Mr. Hickox, will concur in anything that I say on either of these points, but notwithstanding this discouragement I will try to help the committee on some of the points of law which have arisen during this discussion and which I have taken note of.

The viewpoint from which I start is this. If you will pardon this personal statement, I have for some 25 years been engaged almost entirely in the trial of transportation cases all over the country from Mexico to Canada, inclusive, and from the Great Lakes, all along the Atlantic seaboard, down as far as New Orleans. I think I have tried or been concerned with all sorts of rail cases, all sorts of cargo cases, that can probably arise under bills of lading, and I will try to give you my experience in the handling of these cases from the standpoint of a practical lawyer. Sometimes I win, but sometimes I lose.

To start with, from this vast volume of evidence you have heard here as to the reason for the theft and the pilferage losses I do not think there can be any real doubt in the mind of any man who has listened to the evidence of the fact that this evil has mounted up from nominal losses by leaps and bounds until it has gotten to such

proportions that it is an immense proposition and it has become an actual menace to the export business of this country. I do not think any sensible man will doubt for a moment that this country can not exist on domestic consumption alone; it must have an export business, and that business has been and is at this time menaced, the safety of it put in jeopardy, largely due to the fact that theft and pilferage losses and nondelivery losses have mounted to such enormous amounts that the shippers can not compete and the buyers abroad will not buy, and therefore it is only a question of time, by reason of the competition of the other countries, when the export business will fall in many lines and almost never be able to be built up again as it was before.

Now, the laws of nature are inviolate. Every effect has its cause; there never was an effect that did not have a cause, and the point we want to reach now is to find the cause of the evil and correct it at once. I say it is a logical conclusion, giving all due allowance for the effect of the war and the breaking down of the morale of the world—I say it is an inevitable conclusion that we must reach that cause of this breaking down, and these enormous theft and pilferage losses are due to the fact that the man whose business it is to see that they do not continue and grow is not doing his duty. I think that is logical, and I think you will agree with me, that the fellow whose business it is to stop that, is not doing his duty.

Who is the man whose business it is to stop it? The man who has the goods in his possession. You are the shipper, and you can not follow the goods; you do not know where they are, but the man who has them in his possession knows where they are, and it is his business to see that they are taken care of.

What line of business in this world can be conducted on the theory that, notwithstanding he has paid for the goods, the man to whom he sells them must take his chances on getting them or not. There is not a merchant here who could sell a dollar's worth of goods the second time to any merchant abroad if he says to that merchant abroad, "Pay me first and take your chances on getting my goods." But the other fellow says, "No, I will only deal with the man who will see that I get the goods that I buy." That is what these steamship companies are doing. They say, "Pay us the freight." They insist upon the freight. They say, "It does not make any difference whether we deliver the goods on the other side, but you must pay us the freight and take all the chances, not only of the natural dangers, but the dangers I permit to go on in my establishment," and that includes all kinds of thievery, and that is what is being done to-day. No other business in the world could be conducted, nor did anybody ever have the temerity to undertake to conduct business on any such theory as that, except the transportation companies, and at the present time the worst of these are the steamship companies.

Starting with that as a premise, let us go back to a few years ago. The original bill of lading was about like this:

> Received on board goods, we will say the *Neptune*, lying at the port of London, bound for the port of New York, U. S. A., 24 bales of wool, in apparent good order and condition, belonging to John Williams, to be carried to the said port of New York, and there delivered in like good order and condition, the perils of the sea only excepted, and may God grant safe passage and fair winds.
>
> JOHN JONES, *Master.*

That is what the bill of lading was in 1700. I have half a dozen of them in my office now.

A bill of lading to-day no man can read without a ruler, and frequently a magnifying glass. I do not believe that my learned friends on the other side who prepare these bills of lading can take up one of them and read it continuously from one end to the other without those two things, or one or both of them.

Why is it that there has been such change in the bill of lading? It was a little document; I have bills of lading in my office to-day that you have to fold over four times to get them in an ordinary folder. What is the change, and what is the justification for it?

Under the common law it came to be felt that the reasonable limitations, based upon the reduced freight rates, the consideration being the reduced freight rates, that it was proper to introduce in bills of lading just two elements of a limitation, that it must be supported by a consideration, which was reduced freight rates, and it must be reasonable. Reading over those bills of lading, if they were not serious, it would be a joke; it would be comical to consider a majority of those provisions reasonable. They are absolutely comical, if the matter were not serious.

I say, in addition, that they are not based on a reduced freight rate. I do not believe there is a steamship line on the Atlantic seaboard that has a schedule of rates based upon anything like a scientific calculation of what is just compensation for a common-law liability and a limited liability such as bills of lading contain now that they can show to any shipper, and I say that with some degree of confidence.

I have tried a great many cases and I have asked a great many people, representatives of steamship companies and railroad companies, to show me any calculation they have based upon what they consider, or what any actuary or any man who is a mathematician considers, based upon their experience, is a fair rate to charge for a given commodity based first upon a common-law liability and second upon limited liability, and I have never seen one yet.

I tried seven cases in Houston, Miss., against a railroad, growing out of the destruction of cotton in a compress there. Every bill of lading contained a clause reading "that in consideration of the reduced rate at which this shipment is accepted, there is exemption from fire," and a lot of other things. When we came to try that case they put their agent on the stand, and they were bluffing large shippers right along on the theory that this was an exemption so that they could not recover. We did not take their word for it and we brought suit. They put their agent on the stand. He had been there some 30 years. I asked him on the stand "Have you any other rate you can give a shipper?" "No." "Supposing a shipper asks you to give him another rate, can you give it to him?" "No." "What would be his course of action; what would he have to do?" "The best he could do would be to go to headquarters." "Where is headquarters?" "The headquarters of the road is at New Orleans." "You are 500 or 600 miles away from New Orleans. Have you ever been able to give anybody that rate?" "No."

I asked him confidentially afterwards, "Has there ever been a reduction in freight rates to Sound ports since you have been with this road?" the Sound ports meaning the ports on Long Island. He

said, "No." I said, "On what theory can you support this bill of lading that you will give this reduced freight rate?" He said, "I can not do it." But he said, "The officials of the road must be able to do it." That is a fair illustration of what happens.

I think that is theory; it is not a fact that the rates in bills of lading are based upon even reasonably scientific calculations on the risk and of the amount that ought to be charged commensurate with the risk, on the one hand, with the common-law liability, and on the other hand with the exempted liability.

Now, my friends have been very much concerned in regard to this proposition. My friend, Mr. Campbell, I judge from his examination of some of the witnesses, seems to be considerably concerned about the difficulty of determining what proportion of the losses occur on the steamship line and what proportion on the railroad line. That is not a matter of importance here at all; because, as a practical proposition, the carrier—that is, the ocean carrier—can only be held liable for the loss which it occasions. We will take care of the rail carrier later, and we will take care of the broker later. He has not any concern with the broker or rail carrier. We are concerned with the ocean carrier, and we want to find a remedy for this situation; we want to find what the remedy against him is.

In the trial of every case we have to furnish the proof with reference to the goods from the day they were shipped to the moment they got into the hands of the carrier. Unless we do that we can not hold him responsible. So we call to the stand the packer of the goods; we call the man who bound them up; we call the man who delivered them to the drayman; we call the drayman and show that he delivered them to the steamship company; and we produce, if possible, a receipt showing that they delivered them in exactly the same condition as they got them—that is, they delivered them in that condition to the steamship company. Unless that chain of evidence is perfect the steamship company need not concern itself at all; it makes no difference what the liability is until that chain of evidence is perfect. And when it is perfect, it is up to the ocean carrier, it seems to me, from the most common, ordinary point of view of justice, to have the same obligation which any other person has, and any other corporation has, to exercise proper care in connection with the thing with which it is dealing. So they need not have any concern about these other people. If the carter loses it, we will get after him; if the mail carrier loses it, we will get after him. The carter is a common carrier. If the shipper has not shipped it, we must prove what he did.

When we come to that proposition we get this condition: He confronts us with a document which nobody can read and we could not read without the assistance of a ruler or magnifying glass. He says, "You have the option to take an unlimited bill of lading or a limited bill of lading." I say he has not anything of the kind, absolutely. No shipper can do that. Take a shipper in the interior. It is impossible for that shipper to go to the seaboard and make arrangements for a bill of lading with an unlimited liability. He could not do it if he was on the seaboard. Let anybody try to go to the steamship company and ask for rates on a given commodity with unlimited liability. He could not get it, and shipments would cease, for all practical purposes, if he had to do that. They have

their bills of lading printed. You take the bill of lading they give you; if you do not want it, they will not take your shipment.

If you take up this proposition you have a bill of lading that is what? I think the premium contract is one of the most complete and perfect camouflages that has ever been perpetrated on the shipping public. There is nothing to it at all as a practical matter. That proposition does not apply if they have an alternate rate on file in the Interstate Commerce Commission. Therefore, we get the carrier on a bill of lading and a contract which exempts himself from negligence. But they say no; he can not exempt himself from negligence; he is liable for negligence, but only for a limited amount; only for a limited amount of his negligence. In other words, they have taken really hundreds of years to get to the point where they can, in effect, limit negligence by limiting the amount to such a nominal sum that it is inconsiderable, and it is not, as I say, based either on a reasonable rate nor is it reasonable in its terms. They give you a document which in effect limits their liability for negligence. Is there any other business in the world, is there any man in the world that can limit his negligence or the amount of his liability for his negligence?

Somebody illustrated the question of compensation. A man can protect himself against negligence by insurance, but he has to pay it himself. I say if a corporation would say it has no concern as against compensation loss, and therefore the moral hazard is low, it will do everything possible, and the rates are dependent upon the amount it has to pay in the course of a year, and it will protect itself in every way it possibly can to keep the premiums down, but there is no business concern I ever heard of that could actually exempt itself in effect from liability for negligence and on the other hand claim actual benefit of insurance which the other man is going to pay for.

On that point you are touching on an export bill of lading, and I am opposed to insurance on an export bill of lading because it does what the carrier has been trying to do for years, forcing the shipper to insure for the benefit of the carrier, because they add the rate of insurance on the bill of lading to the freight. They never pay it. They have done it over and over again, where they have an insured bill of lading at one price and an ordinary bill of lading at the other price, and invariably they force the shipper to add the premium, absolutely. In other words, the carrier is exempting himself from liability in effect and trying to force the shipper to insure for his benefit against his own negligence. It has gotten to a point of absolute thievery, permissive thievery. I say the carrier does not care whether the goods are stolen or not at the present time. Let me illustrate that point.

I have in my office the case of a large shipment of hats by Stetson & Co. It was found that those hats were pilfered on the wharves in Philadelphia, many of them, great quantities of them, and we investigated the matter and found, and our belief was, that the Negroes were stealing those hats. We tried to get the carrier to do something, but the carrier was not interested. We finally got the shipper to have three Negroes arrested. They appeared with very able counsel in Philadelphia; one of the political counsel in Philadelphia. They appeared before a magistrate. Where they got the

money to employ a man of that kind nobody knows, but we have our suspicions. The darkies were discharged, and each one of them went out wearing a Stetson hat. That is an illustration of how little interest the steamship companies have in the matter under the circumstances at the present time. They have not any interest in it whatever. They do not care what happens.

One of the cases they rely on is the case in New York, where there was a theft of $2,000 worth of stuff. They admitted that the goods were stolen by their employees and that their liability was $50. Of course the court in New York said that was a perfectly good case, and they said "We will pay the $50; that is all that we are liable for," and that is all they ever paid. That case has been cited over and over again in support of their proposition.

I say any business conducted on a vicious and false business basis like that ought to be stopped. Any business conducted on a permissive basis in which thievery is necessary to support it, and open, notorious thievery, is on a false basis and ought to be stopped, and now is the time to stop it, and it must be stopped.

They will come back and say the freight rates must be increased. All right; increase the freight rates to a proper extent. They say we will be driven out of business. But if they can not conduct business like that on an honest basis then let them get out of it. There will always be somebody who will run ships. If these fellows can not run ships on a reasonable, honest basis, let them get out of the business. Somebody else will take their places. If the basis of their business must be permission to their employees to steal everything they can get their hands on, then the business is on a false basis, and all of them should get out of it. Somebody else will take it up.

I think Mr. Edmonds raised the question as to whether or not this could be corrected by the Interstate Commerce Commission. It can not be corrected through the Interstate Commerce Commission. The Interstate Commerce Commission has not the jurisdiction to correct it. The Interstate Commerce Commission is an administrative, quasi-judicial body.

Under the original act and the Carmack amendment of 1906 it had certain regulatory powers applying only to shipments within the borders of the United States, between the States. The act of 1915 extended that territorially, among other things, and gave them jurisdiction where the shipment was from a point in the United States to an adjacent foreign country, but did not extend it and never has extended it to a shipment to a nonadjacent foreign country. So the jurisdiction of the Interstate Commerce Commission to-day ends at the seaboard; it makes no difference whether they have a through bill of lading or not. Their jurisdiction ends at the seaboard, and the Interstate Commerce Commission can not do anything to remedy this proposition. They have no control over an export bill of lading; they have no control over an ocean bill of lading beginning at the seaboard.

Let us look at the Shipping Board. It was intimated that the Shipping Board might do this. The Shipping Board could undoubtedly do it as to their own ships. It can not do it, in our opinion, as to any ships not belonging to the Shipping Board. They can prescribe a bill of lading to apply to all Shipping Board vessels,

but when it comes to outside lines they have no jurisdiction. That is the general opinion of admiralty lawyers, although the case has never been decided. So, in my opinion, the Shipping Board is not given control of a bill of lading to a nonadjacent foreign country where the vessel is not a Shipping Board vessel. There is just one phase of the legislation, which is very simple, in which the Harter Act is very good, so far as it goes. It was intended to go the limit, but it has been frittered away by the decisions of the courts by a construction that was strained and narrow, and which, as Mr. Englar has said, we will guarantee the original preparers of the act never intended it should have. It was intended to make the carrier liable for the full amount of its liability where its negligence was established. That has been done away with, so that now in the event of a reduced freight rate it can limit the amount of its liability and accomplish the very same thing. I will guarantee that Mr. Englar and I can draw a bill eight lines long and attach it to the Carmack amendment which will absolutely remedy that condition and preserve to the ship everything it is entitled to, and will not change a word in the law but will simply add 8 or 9 or 10 lines to it and correct the evil we want to correct, and that is that no carrier shall be able to limit the amount of its liability on account of its negligence. Nobody else can do it, and it should not be able to limit its negligence, or the amount of its negligence, provided it is established that it was negligence, but if it was not negligence it has nothing to fear. That is the first thing.

The second thing is that a reasonable time should be given to the shippers to present their claims, and the provisions in regard to that are not reasonable. A great many illustrations have been given on that. Let me give you one that came under my personal observation. This was a shipment of underwear; so many suits of underwear in a box—a dozen in a box, we will say. Hundreds of dozens of these boxes were delivered to a wholesaler abroad. Only a portion of each one was taken out—two or three. They went along—they were all closed up—to the purchaser, put upon his shelves, sold in due course to the retailer, and the retailer in due course sold them to the customer, but it would have been a physical impossibility for the wholesaler who bought the goods to stand on the dock and open hundreds of dozens of those boxes and count absolutely every suit of underwear that was in them. Yet that was what he would have to do to comply with any one of the bills of lading that has lately fallen under my observation. It is not practical, and after all business is based on practical matters, and it is not possible.

Speaking of the variety of bills of lading, no two of them are alike. We had in our office not long ago a large series of cases of damage to cotton growing out of the shipment. There were 40 different bills of lading, and they came from all over the country, in the South, and when the bills of lading were attached to the documents in the bank they went through the bank, and many of those required notice should be given at the ports of customs, some of them within 30 days and some less, and they did not get further; they were not delivered, some of them, for several months after. The very absurdity of a thing of that kind is too apparent to require any serious argument.

Mr. CAMPBELL. Did you say that was valid and enforceable?

Mr. LAWS. The courts have held that provisions requiring notice, even most unreasonable notice, as soon as the goods leave the ship's tackle, before they leave the wharf, are valid and enforceable. They have sustained that over and over again. Yes; I will say it was valid.

Mr. CAMPBELL. The courts have held that those notices are not enforceable and valid unless they are reasonable.

Mr. LAWS. No; I happen to disagree with you on that.

Mr. CAMPBELL. I will bring you a decision on that.

Mr. KIRKPATRICK. You mean the courts have said in so many words that an unreasonable provision or notice is valid?

Mr. LAWS. No; they have said it must be reasonable, but they have said that most unreasonable things were valid.

Mr. CAMPBELL. They have said the impossible was not reasonable?

Mr. LAWS. No; they have said many times, over and over again, that the provision in the bill of lading that claim must be made as soon as the goods leave the ship's tackle is valid. How could any living human being tell what was lost in a shipment of underwear before the goods were at least delivered into the hands of the wholesaler? As a practical matter, that could not be determined until they got into the hands of the retailer who was dealing with the party.

Mr. KIRKPATRICK. That was one of the cases which would come within the limitation.

Mr. LAWS. It seems to us there ought to be a reasonable time under the circumstances of the case.

Mr. KIRKPATRICK. I suppose they have some cases which can not be provided for at all?

Mr. LAWS. Absolutely. Another proposition is this question of the burden of proof, and I only reiterate what has been said. The burden of proof ought to lie where it originally starts. The burden of proof ought to be upon the man who loses the thing. Take, for illustration, the case of a bank. If you give your money to a bank and the bank loses your money, it would be absurd to say that you would have to prove the negligence of the bank. The mere loss is proof. So I say the loss, the destruction, the stealing, the nondelivery of goods ought to be sufficient prima facie proof of negligence.

Mr. LEHLBACH. The principle of res obsequitur does not apply to a boat?

Mr. LAWS. No: it does not apply now. I have in my office to-day three or four cases of a shipment of clocks, where in one case there was a shipment of 11 packages of clocks, and in another case a shipment of 9 packages, and in another case a shipment of 12 or 13 packages. In the 9-package shipment we did not get a single package; in the other shipments we got 2 or 3 packages, probably 5 or 6 altogether. The value of those clocks, if I remember correctly, was something like $16,000. They admit nondelivery of those clocks to China, and we can not get a dollar over $100 a package, and yet they admit nondelivery of the whole nine cases in one instance, and we have not got a single package of that stuff. We can not recover anything beyond $100. I have a pile of claims that high [indicating]. I am turning them down. The question is whether they can get any recovery. They are not worth anything, and I am sending them back to the people they came from.

They are all going back because there is no recovery. I have to tell them that under that provision of the bill of lading they can only recover $100; and there is no use in going into an investigation, because it will cost more than they could get out of it.

Those are the points that are important, and you can amend the Harter Act. It is a very simple remedy. It ought to be amended so that they can not limit the amount of liability for their negligence, and the burden should be put upon the carrier to show that it is not negligence. Then there ought to be a reasonable time for the filing of the claims.

What remedy there is for the proposition stated by Mr. Herrick that a ship should be compelled to sail on time I am not prepared to say. I have never had any cases in which that question was concerned. But if that is a continuing evil, it ought to be corrected.

Mr. CAMPBELL. I would like to ask Mr. Laws whether he is counsel for any steamship owners?

Mr. LAWS. No.

Mr. LEHLBACH. Mr. Herrick, you have a telegram you desire to insert in the record in connection with your remarks?

Mr. HERRICK. It is along the lines of diversion from the original scheduled voyage after a freight contract has been made. This is a telegram I have received this afternoon from a packer in Chicago:

On July 14 we engaged freight on steamship *Roma*, of Fabor Line, provisions to Marseilles. The undertaking was that boat would proceed to Providence, R. I., to take on passengers and would proceed thence to Marseilles direct. We are now advised that this steamer will sail on 20th from New York to Providence; will then proceed to the Azores, Lisbon, Piraeus, Beiruth, then Marseilles, in order named. Will discharge only passengers at some of these ports and at other ports discharge passengers and cargo. Our cargo consists of U. S. meats and lard, all of which are needed at Marseilles; and apart from delay which this deviation will impose on our goods, they are likely to reach Marseilles more or less out of condition. It seems outrageous that we should have no protection against steamship companies handling our products this way. You will observe that they go past Marseilles, proceed to eastern Mediterranean, carrying our perishable goods into those hot waters, and making Marseilles last port of discharge.

That illustrates the question of fact I tried to bring out last evening—that the freight contract is a mere scrap of paper. With all due care which you may use in selecting your steamer, and supposing that it shall proceed direct to a certain port, they then deviate from that, without any chance for protection to the shipper of perishable goods.

I am obliged to you for this opportunity to read this telegram into the record.

(Thereupon a recess was taken until 8 o'clock p. m.)

EVENING SESSION.

The subcommittee reconvened at 8 o'clock p. m., Hon. George W. Edmonds presiding.

Mr. EDMONDS. Gentlemeen, I wish to state that to-morrow morning, the first thing, we are going to hear two of the shippers who, unfortunately, have been unable to get here. They have wired they are on the road, and I suppose they will be here in time to be heard at 10 o'clock. After that, we will proceed with the shipowners.

Mr. Loines is going to speak to-night, I believe?

Mr. LOINES. We have been discussing our program, Mr. Chairman, and I think we will let some of the steamship company representatives, who have come down especially for this hearing, testify to some of these questions of fact first.

Mr. EDMONDS. Before you go on?

Mr. LOINES. Yes.

Mr. EDMONDS. Then we will hear Mr. Hilton now.

STATEMENT OF MR. FRED E. HILTON, BROCKTON, MASS., REPRESENTING THE BROCKTON CHAMBER OF COMMERCE.

Mr. HILTON. Mr. Chairman and gentlemen of the committee, I represent the Brockton Chamber of Commerce and also the Brockton Shoe Manufacturers Association and the New England Shoe and Leather Association. Mr. Baldwin, whom you heard this afternoon, was with me, and really, between ourselves, we agreed that he would present most of the argument. I have only two or three thoughts that I would like to include.

One of our large shoe dealers received a notice from one of the insurance companies that since they had been doing business with this insurance company they had paid losses to the amount of $50,000 more than the premiums that this insured company had paid them; therefore, they would either have to discontinue this insurance or do it on a new basis of 75 per cent. That is one reason that happened to get us interested in this change.

In discussing with the traffic committee the possibility of passing this law and thereby putting the burden of proof upon the steamship lines and the railroads of proving that they were not liable for the negligence, we admit that if, after trial, they show that they need an increased rate to handle this properly, that they are entitled to it.

At the present time it is necessary for the owner of the property which has been lost, damaged, or injured between his shipping floor and the consignee's receiving room to prove beyond a reasonable doubt that such loss, damage, or injury actually occurred while the shipment was in the hands of the carriers. In other words, it becomes necessary for him to prove to the satisfaction of the carrier that the loss, damage, or injury claimed did not occur prior to the time that the bill of lading was signed at point of origin or subsequent to the time that the goods were delivered at destination. This clearly places the burden of proof upon the owner of the property and not upon the carrier, who is the party in possession while the property is in transit.

The Cummins amendment provides that if the loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim or filing of claims shall be required as a condition precedent to recovery. Otherwise, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed.

It follows that the owner of lost or damaged property can not know whether the fault developed while the property was being loaded or

unloaded, or was due to carelessness or negligence on the part of the carriers. As the various carriers make a practice of disclaiming carelessness or negligence on the part of their employees, it becomes necessary for the owner to file his claim within the six months' period or prove that his loss was due to the causes enumerated above.

The Cummins amendment was fathered by a live-stock man and all authorities seem to agree that it was drafted to protect the live-stock shipper, with apparent disregard to shippers of other products.

To illustrate, it is not uncommon for live stock to escape from loading platforms or chutes, nor is it out of the ordinary for stock to become injured during the process of loading or unloading. In either case it is not impossible to ascribe a cause for the loss or damage. On the other hand, loss or damage to freight other that live stock, specifically located and ascribed to any one particular cause, is almost always out of the question.

I referred to the live-stock question largely from this reason: it is a custom in handling such shipments to have somebody present, perhaps the owner of the live stock, while it is being loaded onto the cars, and, down at the other end, then somebody present who is going to receive it, which is not true with hardly any other class of shipment.

Such loss or damage (referring to freight other than live stock) might occur in numerous ways, while the property was in the hands of the carriers, and it would be manifestly impossible for the owner to prescribe a cause within the meaning of the act. It is obviously unfair to expect the owner to know where the loss or damage happened and to advise the cause, when we remember that the carrier was the party in possession and that the shipment had been out of the shipper's hands for some time.

The other questions I had were covered by Mr. Baldwin, and I will simply include in the record that these three organizations that I represent want to go on record for some bill which will change the burden of proof to the one in possession of the goods, so that that business will be conducted as practically every other business in the United States is conducted.

I thank you.

Mr. EDMONDS. Are there any questions, gentlemen? If there are no questions we will call Mr. Ralph B. Jones.

STATEMENT OF MR. RALPH B. JONES, MEMBER OF THE NEW ENGLAND SHOE AND LEATHER ASSOCIATION AND OF THE NEW ENGLAND WHOLESALERS' ASSOCIATION.

Mr. JONES. I am at present connected with W. H. McKelway & Co. and am also a member of the New England Shoe and Leather Association and of the New England Shoe Wholesalers' Association.

Mr. Chairman, when I found on Saturday noon that I was to come here I felt that I wanted to give something more than merely another rehash of the same argument, so I endeavored to get together some figures. To get out a questionnaire to the members of this organization and get it returned by Monday evening was impossible, so I sat down with five of the member concerns and went over it with their traffic managers and export managers, and they gathered

together figures which, I think, are both interesting and representative.

These five concerns in 1920 had exported on old, well-established steamship lines a total of approximately a little bit under $4,000,000. At the same time they had filed claims for pilferage loss to the extent of $137,000. That is a little bit less than 3½ per cent of the amount shipped, for which they had filed claims. I was not able to find out just what they had paid in freight on that; but for the firm I am at present connected with that was about 15 per cent more, in our case, in claims that we had filed for pilferage on these old-established lines than the freight we had paid.

In addition to that, on freight not delivered to our customers, which they wanted to have delivered and that they had bought, I separated the figures and tried to get the difference between the old-line well-established companies that are conscientiously doing the best they can under the circumstances to deliver merchandise correctly and some of the more recently established lines. In saying that they are doing the best they can under the circumstances, I do so with a little reservation. If they were personally responsible for the merchandise they might put a little more push and pep behind their efforts; but I do not for an instant claim that they are careless in a thoughtless and unfair sense at all.

Now, then, on the other lines I was not able to get sufficient figures to be fair to present them, except in the case of the organization with which I am personally connected—that is, W. H. McKelway & Co. Out of 130 shipments made on different vessels, belonging to three comparatively new steamship companies, we shipped in those 130 shipments 65,540 pairs of shoes. We filed claims for pilferage for over 35,000 pairs of shoes out of the 65,000; or on a total valuation of $308,000 we filed claims for $166,000 for pilferage loss.

Mr. EDMONDS. Where were those shoes going?

Mr. JONES. Those shoes were going to Cuba. The condition in Cuba was exceptionally bad at that time, and the vessels were delayed in leaving the ports in this country for from four to six weeks, and in some cases, I believe, as much as three months, lying around Newark—principally Newark—because the lines we used to the greatest extent sailed from Newark.

Mr. CAMPBELL. What year was that?

Mr. JONES. Nineteen hundred and twenty. And in the case of the last two boats to unload—I know the name of one of them was *Buttetown*, and I think the other was the *Sunelco*—there was approximately $100,000 worth of merchandise belonging to us on those boats.

Now, we had had such an unfortunate experience with pilferage loss before, and such a difficult time in having our claims filed with the steamship company, that in order to protect ourselves and assist the insurance company we had our representative go to the docks as those boats were unloaded, get the consignee, and see to it that the papers were properly drawn—carefully—to have the representative of the steamship company, of the customhouse, and the consignee all there, get the facts in shape, and file the claim immediately with the steamship company, so that we would carry out all the clause demands and that we should file that claim within 24 hours or 48 hours, whichever the case might be. Then, having done so, as we

were covered by insurance, in order to collect our insurance we withdrew those claims from the steamship company, to be filed in this country with the insurance company, and we were pleasantly advised that as long as we had this insurance they were free from all further obligation for losses amounting in that case to $58,000 on those two ships.

Now, that is the situation; that is what we are up against. We believe it is dead wrong; we believe the only way we can get at a solution is through adequate legislation. As far as the legal technicalities of this law are concerned, I am not equipped to talk; I do not know anything about it, because I am not a lawyer. But here is a situation which you can see is vicious and, if we are to continue in the export business, it has got to be taken care of. Even if it costs us more freight, I do not believe the steamship companies would raise the rate 100 per cent on account of that additional cost; but at present it costs us more than 100 per cent for our pilferage loss—even on the well-established, reputable lines—and, besides that, not delivering the merchandise to our customers that they have bought and that they want. Now, we ask for this adequate legislation and sincerely urge that we can have it.

Mr. EDMONDS. Do you lose your customers when you deliver goods like that, where such a large percentage of your goods are not delivered?

Mr. JONES. In the case of the condition in Habana, our representative there worked that very carefully. Under ordinary conditions, I should say, yes; but what he did was to gather these shipments together and take them into his warehouse and peddle them out to the customers, making this customer's invoice complete and releasing another customer entirely, and in that way he managed to get the shipments that came in on those Trans-Marine Corporation vessels down to a point where his loss was only eight or ten thousand dollars on shipments of a little over $200,000. I think he handled the situation remarkably well.

Mr. EDMONDS. You have still got the goods down there?

Mr. JONES. No; they were delivered. About half of our customers got complete delivery by this salesman's juggling of the situation, and the other half got an entire release from their invoices, and nothing was delivered at all, and we got our money.

Mr. EDMONDS. I would like to ask you about those two boats, the names of which you mentioned that were lying around Newark for some time. Were the goods on the boat, or where were your goods?

Mr. JONES. We had a clear ocean bill of lading from the steamship company and that is all we know. Presumably they were loaded in the hold of the boat, but we do not know that.

Mr. EDMONDS. But they were in the custody of the steamship company, either on their pier or in the boat?

Mr. JONES. Absolutely.

Mr. EDMONDS. You do not know whether they were on their pier?

Mr. JONES. No, sir.

Mr. EDMONDS. Maybe they were out on the railroad still.

Mr. JONES. They had given us their ocean bill of lading, and presumably they do not issue it until they get possession of the goods. They placed it through our forwarder in New York.

Mr. EDMONDS. Still, you do not know what a steamship company does; they do many queer things.

Mr. CAMPBELL. I would like to ask the name of the company?

Mr. JONES. I believe the *Buttetown* is owned by the Trans-Marine Corporation.

Mr. CAMPBELL. How long has that company been in the shipping business?

Mr. JONES. That is a comparatively recent company. That is the reason, in giving the figures, I separated them for the old-line reliable companies who I believe are doing the best they can, and those which have just gone into the business recently.

Mr. CAMPBELL. How does it come that you shipped your valuable shoes on a line that had just gone into the shipping business?

Mr. JONES. As we are not exporters in very large quantity—our exports amounted last year to a shade under a million dollars, that is, 1920—we do not have any elaborate traffic department. We go by what our forwarder says, and we understood the forwarders handling these goods in New York were competent people, and we took their O. K. on those lines. And then our insurance company investigated the vessels that were used by the lines and passed on them, and therefore we washed our hands of it at that time.

Mr. CAMPBELL. The Boston Marine Insurance Co. did that business for you?

Mr. JONES. Yes.

Mr. CAMPBELL. And you relied on the word of your freight forwarder at New York?

Mr. JONES. I do not know how they looked the ships up.

Mr. CAMPBELL. You did not hear the question. Do you rely on the representations of some freight forwarder in New York as to the responsibility and character of the company by which you forward your shipments?

Mr. JONES. Yes.

Mr. CAMPBELL. Why did you not ship by some of the old established lines?

Mr. JONES. Because there was no cargo space. We ordinarily ship by the Ward or United Fruit, and would at that time if there had been cargo space.

Mr. CAMPBELL. And they could not take your goods?

Mr. JONES. Not at that time.

Mr. CAMPBELL. Did you not know that an awful condition existed in the harbor of Habana?

Mr. JONES. We knew the conditions existing in the harbor at Habana; yes.

Mr. CAMPBELL. Were you advised at that time that there were 90 vessels that had been detained down there for weeks and months in that harbor unable to discharge their cargoes?

Mr. JONES. Yes.

Mr. CAMPBELL. And did you inquire at all into the condition that existed in the port of Habana with respect to the warehouse facilities?

Mr. JONES. Yes.

Mr. CAMPBELL. And were you fully aware of the condition that existed there?

Mr. JONES. Yes.

Mr. CAMPBELL. You knew all that?

Mr. JONES. Yes.

Mr. CAMPBELL. And yet in the face of that you sent down this valuable cargo with an entirely new shipping company?

Mr. JONES. Of course during all that time we had advices from Habana urging us that the situation would within a length of time clear up. Now those advices always turned out to be mistaken.

Mr. CAMPBELL. How did you first come to know of these losses; what was the first intimation you got of your losses?

Mr. JONES. Well, when the merchandise was delivered to the customs house and our customers endeavored to get the merchandise through the customs house they found they were shy.

Mr. CAMPBELL. Can you tell the committee how many days or how many weeks those goods laid in the custom house before your customers got access to them?

Mr. JONES. In the case of those last two steamships probably less than 24 hours.

Mr. CAMPBELL. What about the others?

Mr. JONES. And in the case of the steamships that were down there earlier in the season the steamship *Krakow*, which had a little fire in Habana that probably laid in the harbor there for anywhere from two to three months and some of the merchandise was on the lighter.

Mr. CAMPBELL. Do you know how long your goods were compelled to be on the lighter in Habana Harbor before they could discharge even at the custom house?

Mr. JONES. No; I do not.

Mr. CAMPBELL. From those two steamers?

Mr. JONES. From those two steamers my understanding is that they were not on lighters at all——

Mr. CAMPBELL. All cargo has to be lightered in Habana.

Mr. JONES (continuing). Because those two steamers were down there at the very end of the difficulty and there was no attempt made to unload them. I know we had to get reports in order to reinsure for the delay in delivery, and the report made no mention of the unloading having been delayed.

Mr. CAMPBELL. You stated that the old-established companies had done very well. I think you went so far as to say they had done all that they reasonably could.

Mr. JONES. I believe that if they felt the keen responsibility—in the case of this $4,000,000 worth of merchandise that was shipped on the old-line companies, and on which there were filed claims of approximately $137,000, if they saw where they would have to pay 100 cents on the dollar, or the whole $137,000, there might have been a little more punch behind that care.

Mr. CAMPBELL. I would like to have you tell me what you mean by punch. What could they have done that they did not do?

Mr. JONES. I am not a shipping man and I do not know how to run their game; and they might not know how to run my warehouse.

Mr. CAMPBELL. You have been making these export shipments and you are now here criticizing the shipping companies, and before you do that you ought to have some facts on which to base your criticism, and I want a practical suggestion from you; because we are just as much interested in this question as you are.

Mr. JONES. I realize you are.

Mr. CAMPBELL. And what is it they did not do that they should have done, in your opinion?

Mr. JONES. You would have to investigate that from the inside of the different organizations. It would be an impertinence for me to tell you, even if I thought I knew, and I do not think I do.

Mr. EDMONDS. Mr. Jones, you are not a steamship man?

Mr. JONES. No, sir.

Mr. EDMONDS. You forwarded your goods in the ordinary manner, through some forwarding agent, and he was presumed to do your steamship business for you?

Mr. JONES. Yes, sir.

Mr. EDMONDS. And you picked out a steamship line that had room to carry your goods?

Mr. JONES. Yes, sir.

Mr. EDMONDS. And the natural presumption was they would carry the goods?

Mr. JONES. Yes, sir.

Mr. EDMONDS. Otherwise you would not have put them on?

Mr. JONES. Yes, sir.

Mr. EDMONDS. And when they got on you were in trouble?

Mr. JONES. Yes, sir.

Mr. EDMONDS. And that was on account of the steamship companies?

Mr. JONES. Yes, sir.

Mr. EDMONDS. That is simple. [Laughter.]

Mr. RUSH. May I say something about the acceptance of goods when the steampship company knows of the congestion. A company of which I am president won a case some 10 or 12 years ago when it was held by the court that the delivery and acceptance of goods by a steamship company when it knew it was impossible to transport them on account of an embargo, was in itself negligence.

(The following letter was ordered printed in the record:)

TRANSMARINE CORPORATION, PORT NEWARK,
Newark, N. J., August 16, 1921.

CHAIRMAN SUBCOMMITTEE ON MARINE INSURANCE,
House of Representatives, Washington, D. C.

DEAR SIR: Our attention has been drawn to certain statements made before your committee by Ralph B. Jones, representing W. H. McKelway & Co., in regard to theft and nondelivery of merchandise shipped to Habana, Cuba, on vessels referred to as belonging to the Transmarine Corporation.

The steamer *Buttetown* mentioned by Mr. Jones has never been owned or operated by the Transmarine Corporation, and, as far as can be ascertained, no vessel of this name has cleared from Port Newark since the initiation of our service. Neither have we owned or operated the *Sunelco* referred to by Mr. Jones, though one of our steamers, the *Sunelscco*, operates between Port Newark and Habana. A diligent search of our records, however, fails to disclose any shipments of merchandise on this or any of our other steamers for W. H. McKelway & Co. or any firm of similar name.

We shall appreciate the insertion of this letter in the record of the hearings before the subcommittee.

Very truly, yours,

B. L. WORDEN,
Vice President and General Manager.

STATEMENT OF MR. W. C. MITCHELL, NEW YORK, N. Y., CHAIRMAN OF TRAFFIC COMMITTEE OF TANNERS' COUNCIL.

Mr. MITCHELL. Our organization represents all of the tanners or leather manufacturers in the country. Here is a list which I would like to file with the committee, and also a copy of our by-laws.

I did not have an opportunity to send for all the statistics, owing to the shortness of time; but I know that all of our people have suffered from pilferage, and that is what I came here to talk about—theft and pilferage. Six of our shippers have reported the following losses: $1,693, $2,394, $12,802, $513, $1,099, $265, $2,898, $25,000, and $1,231,000. We feel if some suitable legislation were passed that these losses would decrease; in fact, we know they would. But in order to be fair, I would like to state that I know a lot of this pilferage, to a certain extent, happens before the steamships get it. I happen to know that in New York Harbor, leather shipped in carloads is lightered, and I happen to know that a lot of the losses occur on the lighters. I proved that conclusively by cutting out railroad lightering and hiring my own lighter and putting my own men on the job, and the losses stopped.

We had a case of a lot of leather going to Europe where there was a report of about a half of it missing. I knew that in order to steal a bunch of leather like that, they had to have some place where they could conveniently open the bales and do the work. I did not feel it could be done in the ship, but I did feel it could be done in the lighter. I hired a detective in New York to look up this leather, giving him a sample of it. He was on the job for two months and did not find anything. I then called all the salesmen in and I told them to go around and visit around among the different leather stores in New York and see what they could find. I knew the leather was specially made for Europe; I knew it was specially marked. I found the leather. I succeeded in fixing the responsibility on the railroad and I collected the claim. The railroad undertook to prosecute the thieves and one fellow bought it from another fellow, and that fellow bought it from another fellow, who bought it from another fellow, and in chasing the chain down the last fellow had died. [Laughter.]

I had another case like that, and I went through the same procedure.

Commissioner LISSNER. Where did you discover it was stolen?

Mr. MITCHELL. Why, it was cabled to us when the ship arrived.

Commissioner LISSNER. In what place was it stolen and under what circumstances?

Mr. MITCHELL. It was stolen off the lighter. You mean the one I fastened on the railroad?

Commissioner LISSNER. Yes.

Mr. MITCHELL. It was undoubtedly stolen off the lighter.

Commissioner LISSNER. Where?

Mr. MITCHELL. In New York Harbor. The reason I know that is because by tracing the chain from one fellow to another, I was able to demonstrate by the dates, one of which was Christmas, and I very definitely remember it, the steamer did not have it loaded on board at that time: they did not get it until afterwards. You see, they gave the railroad a clean receipt for a certain number of bales: they did

not know how much leather they had; they did not weigh it, and did not know anything about it.

I had another case like that and I went through the same procedure, but I was not able to get anywhere, although I went to a store in New York City and took 466 pounds of leather away from the fellow who had it in the store. I was able to prove the leather was ours, and we took possession; but in tracing it back from one fellow to another fellow, the last one had died. [Laughter.]

Mr. EDMONDS. Do they always die when they steal something? [Laughter.]

Mr. MITCHELL. I do not know. I believe that is about everything, gentlemen.

(The following statement was ordered printed in the record:)

TANNERS' COUNCIL OF THE UNITED STATES OF AMERICA.
New York, N. Y., July 28, 1921.

HON. FREDERICK R. LEHLBACH,
House of Representatives, Washington, D. C.

DEAR SIR: On Tuesday, the 19th, I was in Washington and appeared before your special committee with reference to theft and pilferage in New York Harbor. At that time those present were requested to write to the committee if they wished to make any suggestions.

I am sending you herewith a memorandum that I have drawn up with the help of some others in New York, making suggestions along the line of improving the steamship and railroad service and protecting freight in transit. I am sending you this as information for what it may be worth to your committee.

Yours, truly,

W. C. MITCHELL,
Chairman Traffic Committee.

In order to reduce losses from theft and pilferage via rail or water routes in, to, or from the United States of America—

MANUFACTURERS AND SHIPPERS.

Improve packing.
Employ responsible shipping clerks.
Use only responsible bonded truckmen.
Use serial numbers on all machinery.
Identification marks or numbers to be placed on boxes, barrels, or packages.
Use of second-hand boxes, barrels, or casks should be discontinued.
Use of frail cases should be discontinued.
Too heavy packages break from own weight.
Shippers should be particular not to put too much weight in a single box.
Ordinary foreign ports can handle only 250 pounds easily.
Too heavy boxes cause loss and pilferage account breakage.
Some arrangement should be made with railroads and steamships for separate receipts for different truck loads delivered.
Misdescription of freight should not be tolerated.
Prosecute cases of theft or pilferage. Use every available means.
Arrange with carrier if package is delivered to railroad or steamship in a damaged condition that carrier will notify the shipper at once and not let damaged package be forward. This will tend to assist shippers to get clean receipts.
All packages should be separately numbered and distinctly marked.

THE EXPORTER AND IMPORTER.

Improve packing by cooperation with manufacturers and shippers.
Discontinue selling ex dock where practicable and warehouse all goods promptly as possible.
Discontinue using second-hand boxes, barrels, and casks.

Use no frail cases—only strong, first-class packages.

Give separate orders to truckmen for each truck load of freight.

Discontinue misdescription of all articles shipped in order to prevent fraud and allow carriers to take proper precaution.

Employ only responsible bonded truckmen.

Start propaganda with foreign shippers and consignees to get them to assist in every way to keep down pilferage and theft by proper packing, marking, description, etc.

Too heavy packages break from own weight.

Shippers should be particular not to put too much weight in a single box.

Ordinary foreign ports can handle only 250 pounds easily.

Too heavy boxes cause loss and pilferage account breakage.

Some arrangement should be made with railroads and steamships for separate receipts for each truck load received or delivered.

Prosecute all cases of theft or pilferage. Go the limit.

Arrange with carrier if package arrives or is delivered to carriers in damaged condition to receive direct notice at once so that some steps can be taken immediately to protect loss.

Arouse foreign interests in this campaign and get their help and cooperation.

INSURANCE COMPANIES.

Improve foreign settlement agency service.

Agree to charge differential rates on liners as per theft classification.

Inspect packing of each of the companies insured.

Cooperate with steamship companies to secure greater responsibility, both financial and otherwise.

To secure stricter supervision of cargoes on piers.

Improve watchman service on piers and lighters.

All cases of pilferage or theft should be followed up and prosecuted to the limit.

Try to get laws passed fixing the carrier's responsibility, at all times cooperating with shippers.

Arouse foreign Governments to a sense of their responsibility and need of improving matters for their own protection.

Start a publicity campaign so everybody will know how serious conditions are.

To enforce packing rules.

To accept no packages in bad condition.

RAILROADS AND STEAMSHIP LINES.

Should assume their just liability and protect shippers and consignees.

Should secure stricter supervision of cargoes on station platforms, lighters, and piers.

Should improve watchman service over all cargoes and freight on all piers and lighters.

Should enforce stricter rules regarding packing.

Should accept no packages in bad condition.

Should employ more and responsible checkers.

Should notify at once all exporters, importers, shippers, or consignees if shipments are in bad order.

Steamships should properly stow all cargo so it can not be tampered with or damaged in transit, and shoud be careful not to book freight in excess of carrying capacity.

Should not accept frail packages or recoopered packages and such receipts are often not warranted and give thieves their opportunity.

Should proceed against all thieves. Prosecute to limit.

Should cooperate with all shippers and receivers of freight and see that separate receipts are given for each and every truck load.

Should exercise every precaution to see that trucks and freight are not needlessly delayed.

All packages recoopered should be kept separate and secure from thieves.

Steamships should provide strong room for extra valuable freight and see that captain is responsible.

Carriers should not sell freight at destination without fully trying to reach all interested and get proper authority.

Steamships should organize and adopt strict package rules and abide by their regulations.

POLICE DEPARTMENT AND DEPARTMENT OF JUSTICE.

Police should enforce rule prohibiting junk boats to ply North and East Rivers or any harbor.

Police should use every effort to get at and destroy all fences.

Shippers and receivers of freight, also insurance companies, should cooperate with railroads, steamship lines, American Railway Association, owners of boats and lighters, also with responsible heads of labor unions and police department to see that full publicity is given and all possible protection afforded all freight.

Police should cooperate with carriers and provide protection to all property even to extent of policing piers and docks.

Shippers through this organization should start some police work of their own and see that the services of irresponsible people are dispensed with.

Shippers should help the police department every possible way to secure arrests and convictions.

Shippers should see that district attorney and assistants are aroused to the seriousness of this matter and extra effort made to convict criminals regardless of personal records.

Shippers should see that laws are passed to afford protection to freight in transit and carriers accept full responsibility.

STATEMENT OF MR. J. C. NELLIS, BALTIMORE, MD., ASSISTANT SECRETARY NATIONAL ASSOCIATION OF BOX MANUFACTURERS, CHICAGO, ILL., AND SECRETARY, NORTH CAROLINA PINE BOX AND SHOOK MANUFACTURERS' ASSOCIATION, BALTIMORE, MD.

Mr. NELLIS. The National Association of Box Manufacturers is interested in the matter of export losses through pilferage, breakage, etc., because box manufacturers make many of the export boxes used. Having prepared this statement after sitting through the first two days of this hearing, I have the impression that pilferage is perhaps more important than breakage.

While boxes can probably be made theft proof, a theft-proof box would most likely be too expensive, and it would seem better, instead, to design and construct boxes which would be theft indicative.

The National Association of Box Manufacturers, with headquarters in Chicago and branch offices in the East and West, is interested in the design and construction of stronger and lighter boxes. We have had principally in mind the hazards of transportation within this country, together with the increasing freight rates, and have therefore sought to make boxes lighter as well as stronger. Tests have been conducted for several years, and the results to date all indicate that boxes may be constructed with no more and very often less lumber than previously used, practically always with additional nailing and sometimes with strapping, and be greatly increased in strength. While it might not be desirable in general to seek lighter boxes for exports, the large amount of data now available and tests on boxes and strapping now under way would, I believe, allow us to suggest changes in the design of many export boxes and make them stronger.

The National Association of Box Manufacturers cooperates in box testing with the forest-products laboratory of the United States Forest Service. Most of our box testing is done at the forest-products

laboratory, and we put the results of laboratory tests into practical application to make sure of their adaptability to manufacturing conditions and final use. As an example of such tests I submit the standard schedule for nailing boxes which is based upon laboratory tests, manufacturing conditions, and actual usage. This schedule is intended to develop the full strength of joints in boxes. Previously, or perhaps generally now, boxes were not nailed sufficiently.

The schedule for nailing boxes which I have referred to was prepared for domestic use, but can be readily converted to export use by decreasing the nail spacing by one-half an inch.

There are numerous scientific details regarding box construction with which the average box user is unfamiliar, and if the committee wishes I can discuss scientific box construction in some detail and would be glad to answer particular questions. It might be pertinent to say that export boxes can probably be built strong enough to withstand all possible hazards and also be theft proof, but the cost might be prohibitive. Doubtless, boxes strong enough for the usual hazards of export and so constructed as to be theft indicative can be designed and constructed at reasonable cost. Our experience with domestic boxes is that they may be strengthened with little additional cost, and very often when a box has been wrongly designed and contains too much lumber and too few nails, it has been possible to use less lumber and more nails and make the box not only stronger but lighter. May I pause there to mention a box which a man mentioned this morning. He said he made his box out of inch and a quarter lumber. If he did not have enough nails in it, it was not properly constructed; it would be no stronger than a box made out of half-inch lumber.

I should point out that in testing boxes, we aim to make them equally strong in all parts and joints, which we call balanced construction. It is the old story of the strength of a chain depending on the strength of the weakest link. Tests are made in a revolving hexagonal drum which has slides and baffles so arranged as to simulate practically all the hazards encountered in transportation, and during the course of a test the box falls on every side, every corner, and every edge. Separate compression tests and straight drop tests are also used.

As a matter of interest at this hearing, I should like to mention that the North Carolina Pine Box and Shook Manufacturers' Association, of which I am secretary and which is directly affiliated with the National Association of Box Manufacturers, had last week an exhibit at the marine show and export and import exposition in Baltimore. This exposition was a combination of the marine show of the Shipping Board and an export and import exposition worked up by the Export and Import Board of Trade of Baltimore. Our exhibit consisted of a number of properly constructed export boxes and crates, the standard mailing schedule in leaflet and wall form, charts showing the results of laboratory tests, a model of the forest products laboratory box drum, etc.

I submit photographs of our exhibit and of the box testing drum at the forest products laboratory. The laboratory drums are 7 and 14 feet in diameter. If the committee desires, I would be glad to file other photographs of box testing. Apparatus charts of comparative results of one series of box tests are also submitted.

I would be glad to answer any questions; otherwise, I do not care to take any more time.

Mr. EDMONDS. You did not mean to use that in connection with Mr. Robinson's bill of lading, did you?

Mr. NELLIS. I know nothing about that.

Mr. EDMONDS. You do not want an amendment to the Harter Act to use these boxes?

Mr. NELLIS. I do not; no, sir.

Mr. LOINES. This is a very interesting subject—of the package. Have you, Mr. Nellis, made any study or tests of the ordinary box used in commercial shipments of manufactured products?

Mr. NELLIS. We have tested canned-goods boxes; we have tested shoe boxes. Those are the large lines which have been tested in recent years.

Mr. LOINES. As a result of your tests of the ordinary box, do you consider the package normally sufficient or the export package sufficient, for what it has to go through in order to arrive?

Mr. NELLIS. We have not tested export packages.

Commissioner LISSNER. You spoke, Mr. Nellis, of theft-proof boxes and theft indicators. Would you mind elucidating on that? Explain just how you can make a box theft proof and what practical methods you use for making them theft indicative.

Mr. NELLIS. I do not believe a box can be made theft proof unless you go to so much expense that it would be too costly.

Commissioner LISSNER. How would you do it?

Mr. NELLIS. I would not like to make a box theft proof; I do not think we would try to do more than design a box to be theft indicative.

Commissioner LISSNER. How would you do that?

Mr. NELLIS. There are several methods. There are probably methods we have never thought of. I think, perhaps, the best thing to do, other than proper nailing and proper strapping, would be to fasten all boards from the inside with corrugated fasteners. If you do not know what corrugated fasteners are, they are little thin strips of metal about an inch long and varying somewhat, with a knife edge at one edge and made corrugated, which are driven into the two boards at the joint. You fasten the boards on the inside with those corrugated fasteners. A thief can pull the nails out and try to slide a board out from under the strapping, but these fasteners will hold it. He may drive this out with a chisel or something, but it will show.

Commissioner LISSNER. You speak of fastening them from the inside; just what do you mean by that?

Mr. NELLIS. It has to be done when the box is made.

Commissioner LISSNER. How do you fasten them from the inside on the cover?

Mr. NELLIS. The boards of the cover would be fastened together in that way before the cover was put on. These corrugated fasteners can be driven by machinery or by hand very easily. They do not go through the board. On an inch board, if a fastener perhaps three-fourths of an inch wide or thirteen-sixteenths of an inch should be used, it would not show on the outside.

Commissioner LISSNER. All that would do would prevent taking off one board; it would not prevent taking off the whole cover, would it?

Mr. NELLIS. That would be possible, for them to take off the whole cover. To avoid that you would have to have some sealing methods at the corners and at the edges. There is a method of driving down an auger hole and putting in a screw.

Commissioner LISSNER. Could you not use these corrugated strips to fasten on the cover from the outside?

Mr. NELLIS. I do not exactly get your idea. These little things are only, roughly, about an inch long, perhaps, and they are made in widths for different thicknesses of lumber. In fastening on the cover, to put something on the outside of the box, I should recommend strapping.

Commissioner LISSNER. You could fasten the cover to the box with these same corrugated strips, could you not?

Mr. NELLIS. No; I do not think we could.

Mr. BURCHMORE. They will not work on an angle; that is the trouble. They have to work on a flat surface?

Mr. NELLIS. Yes.

Mr. BURCHMORE. You could not put them over the edge?

Mr. NELLIS. No. Is that what you meant?

Commissioner LISSNER. There is a flat surface between the edge of the cover and the side of the box.

Mr. NELLIS. That could be done; but then you would have the corrugated fastener going into the end grain of the board and it would not hold very well there.

Mr. KIRKPATRICK. How much additional expense would be involved in using that kind of a fastener?

Mr. NELLIS. These corrugated fasteners might add a couple of cents to a box, depending on the size of the box.

Mr. KIRKPATRICK. That is what you call theft indicative?

Mr. NELLIS. That is what we call theft indicative; yes.

Mr. KIRKPATRICK. Because it is impossible to put that back into the same condition?

Mr. NELLIS. If a thief knocked out a board there it would indicate the board had been taken out. Possibly he could drive it out by using considerable force or leverage to tear away those fasteners.

Mr. EDMONDS. Could you make a large-size box in that manner?

Mr. NELLIS. There would be limitations. If you were making a box for a very large dynamo I do not know that it would work. They are not made for very heavy lumber—I mean lumber over an inch thick or an inch and a half, or something like that. When I speak of a box I mean a box from a pill box to a piano box.

Mr. EDMONDS. A piano box is a fairly good size, but from what I have heard to-day I do not think these longshoremen and people who handle freight would hesitate to carry away a piano box. It seems to me they would take pretty nearly anything in sight. I thought we might manage to get a box as big as the hold and save the freight; but just at the present time I am rather suspicious they would take the ship if we did not have the captain on it to watch it. In fact, I think they did steal a Shipping Board vessel over in the Mediterranean for a while and ran around with it on a joy ride.

Commissioner LISSNER. You spoke of other methods that might be devised to indicate theft, did you not?

Mr. NELLIS. Yes. You can make a double box, one box inside another, with the inside end at right angles to the outside end, and so

on with the other parts, and nail those all together with clinch nails. Or you can go further and put some chicken wire, or very heavy wire, between those two boxes; or put a wire, light or heavy, between two ordinary boxes.

Commissioner LISSNER. You represent the box manufacturers generally, do you not?

Mr. NELLIS. Yes.

Commissioner LISSNER. And you suggested some studies might be made of this subject of theft indication, especially?

Mr. NELLIS. No: I was not so much inclined to suggest studies that might be made as that we have so much data on domestic construction that I think we could fall back on that to suggest better designs for export boxes: because while the hazards in exporting are certainly more strenuous than in domestic transportation, they are not entirely dissimilar. It is simply a case of more hazard calling for a better construction.

Commissioner LISSNER. Could you not, for the benefit of this record and of this committee, furnish a written statement concerning these methods of theft prevention and possibly others that you have not referred to, and any other practical suggestions in regard to the construction of boxes for the export trade? Could you not prepare something of that sort and file it with the committee?

Mr. NELLIS. I would be glad to prepare something on theft indication: but I would hesitate to say very much on export-box construction, because we have not studied that very much.

Mr. EDMONDS. You could, through your numerous concerns, certainly suggest a safe package for carrying export goods, ordinary merchandise, could you not?

Mr. NELLIS. I would hesitate to do that, because it is something that should be done for each particular commodity.

Mr. EDMONDS. I am speaking of the ordinary merchandise. You have been here listening to-day; you know the great trouble has been with stuff like hosiery, gloves, ready-made clothing—things that a man can use—hats and shoes. Now, all of these commodities would take about the same kind of package, wouldn't they?

Mr. NELLIS. Roughly, yes.

Mr. EDMONDS. Why could you not at least, for that kind of commodities, get your people to get to work and suggest some kind of a strong and light package that would be perfectly safe? Surely, the ability of the box manufacturers of this country would not be taxed to be able to tell of at least some sort of package that can be used for export business?

Mr. NELLIS. It would not: no.

Mr. EDMONDS. Particularly for merchandise of that kind. Of course, we would not expect you to talk about packages for carrying soda ash and chemicals, unless they were the finer chemicals carried in cases. But for these things like hosiery, gloves, the things these men steal, I should think you would be able to do very well and it might be very profitable for you to do it.

Mr. NELLIS. I can do that.

Mr. EDMONDS. We would like to have it within a short time, but that is not material. The big thing is to submit that matter to the shippers and to the Shipping Board and see whether we can

not suggest to the people of the country something better than we have to-day. It is very evident that what we have to-day is absolutely useless to attempt to save anything if a man wants to get at it. So think it over.

Mr. NELLIS. I will do the best I can.

Mr. EDMONDS. And supply it to the committee, and we will supply it to the Shipping Board, and it may be the means of your getting a lot of good business and at the same time help to solve this matter of losing goods.

Mr. NELLIS. I will do the best I can.

Mr. EDMONDS. Surely there can be a box made that will be fairly proof against some ignorant workman taking stuff out.

Mr. NELLIS. It might not be proof against that fellow who was skillful, but I believe we could make it to show it was tampered with.

Mr. EDMONDS. If you could show it was tampered with when the captain on the boat received it, he would know it had been done on the lighter; if it showed it had been tampered with when the lighter received it, you would know it had been done on the wharf; if it showed it had been tampered with when the man on the wharf received it, you would know it had been done on the railroad. You could follow that package all the way through if you had a package of that kind, and they always tell me the ingenuity of the American mind is so great that we can always find a solution for anything, and surely the box manufacturers are not more dumb than the rest.

Mr. NELLIS. Possibly not; not dumber than the average anyway.

Mr. EDMONDS. Then let us see what you have. It might be you will have a very helpful solution.

Mr. NELLIS. I will be glad to do what I can.

Mr. EDMONDS. Mr. Imlay, you may proceed.

STATEMENT OF MR. WILLIAM IMLAY, GENERAL CLAIM AGENT NEW YORK & CUBAN MAIL STEAMSHIP LINE.

Mr. IMLAY. I am general claim agent of the New York & Cuban Mail Steamship Line, better known as the Ward Line, New York City.

I think, Mr. Chairman, that a great deal of energy is being spent in trying to cure or care for a condition which no longer exists. The testimony that has been given, if my understanding is correct, has been largely to the effect that the complaints have surrounded shipping which moved subsequent to 1915 and prior to the present year. There has not been anything said substantially about the losses being heavy during 1921.

It is common knowledge that as a result of the war there was a breaking down of morale, and in consequence business generally suffered. The underwriters' representatives have testified to the extent that they suffered, and in an endeavor to show that they were not alone in that respect I would like to read into the record the following figures:

In 1914 the Ward Line paid $75,193.09 for cargo claims. That is for losses due to pilferage, theft, damage, and breakage. In that year we carried 747,129 tons of cargo, making the losses per ton cargo 0.106 per cent.

In 1915 we paid cargo claims to the extent of $67,468.80. We carried 847,574 tons of cargo. The claims per ton cargo were 0.080 per cent.

In 1916 we paid $173,590.72. We carried 1,216,145 tons of cargo. The cost per ton cargo was 0.142 per cent per ton.

In 1917 we paid $218,700.10 and carried 1,235,853 tons. The claims paid per ton cargo were 0.176 per cent.

In 1918 we paid $359,402.84. We carried 1,745,631 tons and we paid 0.206 per cent per ton cargo for claims.

In 1919 we paid $345,653.18 and carried 1,801,583 tons, costing us 0.191 per cent per ton.

The figures for 1920 are not available. We are paying some claims for cargo moving during that period, but it is altogether possible that the amounts for claims paid may equal those of 1919. It gives me pleasure, however, to say that the peak has sometime since been passed, and it is my opinion that prewar conditions will soon again obtain. While I can give no figures to support this statement, inasmuch as each of our foreign agents are now showing in the cargo-out reports but few items to which exception could be taken, the only inference to be drawn is that the cargo is being properly and safely handled and delivered at destination.

It should be borne in mind that pilferage can not be entirely stopped, but if the American shippers will use packages similar to those used by the French, British, and German exporters the losses in their shipments will be surprisingly small.

To bring out the difference I might relate that a few months ago, while in the port of Vera Cruz, Mex., I saw lying on the custom-house wharf a shipment of tin plate of American manufacture. Many of the cases were broken and the contents exposed to the elements and they had badly rusted. At the same wharf a British steamer was being discharged and I noticed part of the cargo consisted of tin plate, also cased. This cargo was, however, being landed in apparently good condition, the reason being that while the packages were basicly the same as though shipped from the United States, additional care had been exercised by the shipper, to the extent that each case was strengthened with two cleats, and the cleats themselves were iron strapped. In this connection it may be important to say that it has been our experience that a large proportion of the alleged pilferages are occasioned by packages being insufficiently strong for the use to which they are put.

A great deal has been said about the bill of lading exempting the carrier from all liability, and in that connection may I be permitted to say that the company which I represent has never, to my knowledge, attempted to sidestep its responsibility, and this I believe to be also true of the other older companies, and each of our foreign agents has been carefully instructed to immediately invite claims from consignees and make payments for any and all losses for which the steamer is liable. The liability is largely determined by whether the loss was occasioned by a condition within the control of the company.

The shipper, too, can give further assistance in the care of his property by not having their name, trade-marks, or other insignia on their packages, by changing from time to time their shipping marks, and by the use of reputable trucking concerns; by deliv-

ering their shipments to the truckmen at an early hour in the day, to insure delivery to the steamship pier the same day, there being cases recorded where the truckman receiving goods in the afternoon made no attempt to make delivery the same day, but kept the packages on their trucks over night and made delivery the following morning, and while the packages themselves were in apparent good condition, due to an accident in handling or to some other unusual condition it would be determined that the packages no longer contained the goods declared by the shipper, but rubbish, such as paving stones or other material unobtainable on a steamship pier.

When packages too light in construction for ocean transportation become broken in ordinary handling it is a great temptation for those engaged in the physical handling of the cargo to help themselves, if they feel they can do so without being detected; and while we are cognizant of a basic cause and our bills of lading protect us from insufficiency of package, we voluntarily assume responsibility and pay for any loss which might subsequently be found to exist.

Mr. Rush referred to my company having placed officers to watch cargo at outports; also that they were informed that if they did not cease a strike would be called. I wish to state that it has always been the practice of the Ward Line to require its officers of various grades to watch cargoes during the loading and discharging operations at outports. We carry a considerable quantity of high-class cargo. Some of the shippers realize that it is of such a high class that it would place the property subject to unusual temptation if the cargo was handled as general cargo is usually handled; therefore they place on their shipping receipts the value, intending also to place on their bills of lading the value, and purchasing what is sometimes called an insured bill of lading—in other words, asking the carrier for an additional sum to relieve itself of the liability. We are always glad to do that, because in the ships which my company own we have built what we call special cargo lockers in the holds of the vessels, which will hold a substantial quantity of this high-class cargo. The special cargo, as we call it, when it is received is taken to a portion of our piers which is set aside for the handling of the more valuable property; special watchmen are designated to stand guard both night and day; and special receipts are issued. At every handling a check of the property is made, and when it is placed on board the steamer what is known to us as a special cargo sheet is prepared and our pursers, our chief officers—and sometimes both—are required to sign for that cargo, and they are also required to see that it is properly stowed in the locker built for that purpose.

The cargo, when the vessel arrives at destination, is checked out under the supervision of the chief officer or purser, and they obtain a receipt, a special receipt, from the customhouse representative or the Ward Line representative who receives the cargo.

While the property is on the steamer there are special locks put on that locker, and the keys remain in the custody of the chief officer while the vessel is at sea. We have had very few losses in that class of cargo.

Mr. EDMONDS. You have had some, have you not?

Mr. IMLAY. Yes, indeed. But bear in mind that there is a break in the continuity, Mr. Chairman. We are not permitted, due to the

nature of our business, to deliver a cargo directly to the consignees. We make all deliveries to the customhouse in Latin America. From some of the customhouses we obtain receipts: from others we do not. We have to rely upon our own records: and while in Mexico it is the law that the customhouse officials will check the cargo received and will give receipts for it, as a matter of fact it is never done. The Mexican officials, without exception, take our records as being absolute—that is, at some ports. At one port in particular—Tampico—the customs officials do check the cargo.

Mr. EDMONDS. Do they check the cargo by the package or by the contents of the package?

Mr. IMLAY. By the package. Now, due to conditions over which we have no control, over which the consignees in a large measure have no control—although some of the favored few seem to get around this condition—the property remains in the custody of the customs for several days, and in some instances for several weeks, before the packages are opened for appraisal; and when there has been an unusual delay—or, I might say, a usual delay—not infrequently they find that some of the cases have been opened and some of the goods have been stolen.

It might be well to mention that there are innumerable cases where the customhouse employees, the customhouse watchmen, and others having access to the customs warehouses have been caught leaving the customhouses with property abstracted from cargo cases.

Mr. EDMONDS. What happens in those cases?

Mr. IMLAY. They have been arrested and held in communicado—in Mexico they usually hold a man in communicado for three days, but sometimes a friend will wire to Mexico City, and if a man is arrested in the morning the commandant would receive instructions that afternoon to set him free, and the following day he would be back in the customhouse. That and other conditions make it impossible for the carrier to safeguard the property up to and until the consignee receives his goods.

It was mentioned here this morning that in the case of hosiery it would be impractical to check each package of hosiery in a case, and it would only be fair to permit the wholesaler to take delivery at the port of destination, to sell the goods if necessary, deliver them to the retailer, and when he is putting the packages in the shelves if he finds that he is some short, according to the invoice, to make claim upon the carrier. I think myself that is a little bit far-fetched.

It has also been said that to a large extent—or to a great degree—the owner of the goods has no record of what transpires so far as the goods are en route; that the only record which is kept is kept by the steamship companies, and they are—I do not want to be quoted as quoting some one else in this, but if my memory serves me right it was to the effect that they are reluctant to expose those records. I do not think that the Ward Line has wings sprouting out anywhere, but I want to say that it has always been the practice of the Ward Line to assist the shippers or consignees whenever it has been possible to do so. There has never been, to my personal knowledge, an application made by anyone interested in cargo moving over our line who has applied to us for the facts regarding the movement of the cargo but what we have given them our fullest assistance. In many instances, where the case has been a shipment destined

to New York, I personally have gone to our delivery department and permitted the receivers to inspect the receipts which their truckmen had given for the property. We have gone even further than that. We have gone into the records and have shown the conditions surrounding the discharge of the property from the steamer prior to delivery to the consignee's representative. Our reason for doing that is that while, if there is one class of man in whom I prefer to place my destiny than another, I think it is the truckman—because the truckman—that is the professional truckman—is the most careful man I know. Before taking a package from a steamship wharf he takes all the care possible to see that that package is in good order and places proper exception on the receipt which he finds.

Mr. EDMONDS. This is the truckman that brings the goods to your pier in New York?

Mr. IMLAY. No; taking them away from the pier.

Mr. EDMONDS. From the pier at the point of destination?

Mr. CAMPBELL. At New York?

Mr. IMLAY. At New York; yes. In many instances we have found that while they exercise diligence and care in scrutinizing the package very carefully when they take delivery, they sometimes make delivery with great haste and put their coat over a crack or a nail hole or some other defect in a package which they may be delivering.

Mr. EDMONDS. Are your truckmen bonded?

Mr. IMLAY. We have no truckmen.

Mr. EDMONDS. Are the truckmen that are delivering—don't you have railroad truckmen delivering to you in New York?

Mr. IMLAY. No, sir; the deliveries that are made by the railroads to our line are lighter deliveries.

Mr. EMONDS. Is that true of the New York Central?

Mr. IMLAY. When the cargo is in any quantity; yes.

Mr. EDMONDS. Was there not a time there that a considerable portion of the cargo was delivered in trucks?

Mr. IMLAY. A goodly portion of the cargo—the higher valued cargo—is trucked now.

Mr. EDMONDS. Are those truckmen bonded?

Mr. IMLAY. I would not want to reply to that.

Mr. EDMONDS. The railroad really makes this delivery to your pier?

Mr. IMLAY. In some instances, where they deliver by lighter; yes.

Mr. EDMONDS. How about the trucking?

Mr. IMLAY. When trucks make delivery of cargo having its origin in an interior point, the forwarding and delivery is usually made by a freight-forwarding agent who delivers his railroad bill of lading and order to a truckman and ask him to go for the goods.

Mr. EDMONDS. Your first investigation of that truckload of goods then comes when it arrives at your pier?

Mr. IMLAY. Yes.

Mr. EDMONDS. Then you look for any damage that may be about the package?

Mr. IMLAY. Yes, sir. One of the contributing causes to pilferages and the tremendous losses during the period before mentioned was, as you know, due to the inability of the merchants to take prompt delivery of their goods in Cuba and in Mexico. You mentioned, I believe, a few minutes ago that you had a great deal of information

on that subject. I may mention in that connection that other ports with which our vessels trade in the island of Cuba were suffering from similar conditions. That was also true of the principal ports on the Gulf coast of Mexico.

Mr. EDMONDS. That situation has been cleared up now, though, pretty well, hasn't it?

Mr. IMLAY. In Cuba, yes; almost entirely so.

In Mexico it is being gradually relieved.

Mr. CAMPBELL. While you are on that subject, will you not tell the condition that existed in the port of Habana? Let us have the details of what the facts were down there.

Mr. IMLAY. In January, 1919, I had occasion to visit Habana, and I made inquiries as to the number of ships that were in the harbor at that time, because they were anchored so close together that in swinging a great many of them struck the lighters. I was informed that there were ninety odd, the majority of which were not being discharged, as there was a strike on, and there were no facilities for handling the cargo. That was in the month of January, and I was reliably informed that a great deal of cargo which had been discharged from the vessels as far back as October, 1918, still remained on lighters. These lighters were owned by various interests. It was necessary for some steamers to discharge their cargoes entirely into the lighters, and they had no further control over the goods, notwithstanding it has been said here that the carrier should assume responsibility up to the time that the goods reached the consignee.

Mr. CAMPBELL. What was the condition of the customhouses?

Mr. IMLAY. The customhouses and wharves were so badly jammed, so badly congested, that not a ton of freight at that time could be landed. There are hundreds of thousands of dollars worth of cargo which has not been accepted by the consignees for some reason or another that is now stored in a cemetery outside of the city of Habana. This cemetery is called a "warehouse." It is exposed to all the elements, and a great deal of it will suffer beyond repair.

Mr. EDMONDS. Have you not your own piers in Habana?

Mr. IMLAY. We have our own terminals; yes.

Mr. EDMONDS. Couldn't you lighter from your ship to your own piers, or were you congested on your own piers at the same time?

Mr. IMLAY. The entire harbor was congested. Our lighters were also full of cargo. We were, perhaps, more fortunate than some of the other steamship companies, because as far as possible our lighters were tied up at our terminal, and the property could be partially protected.

Mr. EDMONDS. Could you not put the material on your terminal?

Mr. IMLAY. Our terminal was as badly congested as a great many of the other wharves.

Mr. EDMONDS. You coud not move the material there?

Mr. IMLAY. We could not move it. I might mention that while I was in Habana a year ago last January the Government attempted to relieve this congestion by using convicts from the prisons, soldiers, and strike breakers. There was one gentleman who had a great many thousands of dollars worth of potatoes which originated in the North, were brought down there and placed on lighters and on a pier, that were covered up with other cargo, and by using some means—I don't know what—he was able to get the Government to use the soldiers and

convicts to uncover the potatoes, but unfortunately it was too late; the potatoes were substantially all spoiled and had to be taken out to sea and dumped.

Mr. EDMONDS. The convicts were not used generally along the piers, though, were they?

Mr. IMLAY. They were used all along the water front.

Mr. EDMONDS. For guarding the property?

Mr. IMLAY. For guarding property. The soldiers were doing the work.

Mr. EDMONDS. The soldiers were guarding the property and the convicts were guarding the soldiers? [Laughter.]

Mr. CAMPBELL. Did your company or did the steamship companies have any control over that condition or that situation?

Mr. IMLAY. None whatever.

Mr. EDMONDS. That condition in Habana continued pretty well all through the year 1920, did it not?

Mr. IMLAY. It started early in the fall of 1918 and was cleared up about the first of this present year.

Mr. EDMONDS. Did you continue to accept freight for Habana right along?

Mr. IMLAY. In limited quantities.

Mr. EDMONDS. You did try to discourage shippers from sending down there to that point unless it was absolutely necessary?

Mr. IMLAY. A great many of the companies restrained—I say a great many: some of the companies—refrained from accepting any cargoes for Habana, but there was such a great demand for goods of various kinds in Cuba that many of the shippers whom we had been serving for years made representations to us that it was necessary to take their property to Habana, and we did so, but with great reluctance, knowing that our ships would be held up indefinitely.

On our passenger ships we for a time would accept not more than 1,000 tons of cargo. The ships will carry between 3,000 and 5,000 tons, depending upon the vessel.

Mr. EDMONDS. During or since the war you have been allocated Shipping Board vessels in that trade, have you not?

Mr. IMLAY. Some; yes.

Mr. EDMONDS. Do you find the loss in those vessels is greater—are these allocated vessels, or do you supply the crews to those vessels, or does the Shipping Board do that?

Mr. IMLAY. We have had ships both ways. We have put the men on board; other ships we have had from the Shipping Board allocated to us with the crews supplied.

Mr. EDMONDS. Is there any difference in the losses sustained on the Shipping Board vessels compared to your own regularly run line vessels?

Mr. IMLAY. I am not prepared to answer that.

Mr. LOINES. Is it not true, Mr. Imlay, that a good many of those Shipping Board vessels that were assigned to you were not suitable for the carriage of general cargo?

Mr. IMLAY. Many of them. That too, was the condition which made for most unsatisfactory results. Some of these vessels which were allocated to us were placed in trades where it was necessary for us to make four or five, possibly more, ports. It is, as a practical proposition, impractical to stow general cargo so that it can be

discharged satisfactorily in that number of ports from what is called a "single-deck" ship.

Mr. EDMONDS. The reason I asked the question as to the comparison with Shipping Board ships was that I would like to know whether a regularly organized line of steamers with their regular crews was able in any way to reduce the amount of loss. In other words, will we by experience in time have crews and captains who understand their business sufficiently to prevent this loss?

Mr. IMLAY. Under the present conditions, Mr. Chairman, I would say that it is my personal opinion—this is unofficial—that we should place officers, masters, and crews on board a limited number of ships and operate those successfully in the trades in which we are engaged. That is my impression.

Mr. EDMONDS. Well, I was just trying to find out whether eventually or in time, as we get these men that are experienced on the ships, these losses could be stopped. I think one of the greatest troubles to-day is the fact that some of our new officers do not understand how to carry out their duties.

Mr. IMLAY. One condition that makes for the improvement generally is our ability to get back a great many of the men that were with us for many years. That is true in the several capacities in which these men are engaged, masters, deck officers, tally men, stevedores, etc.

Mr. EDMONDS. What makes you think that the amount of loss is being rapidly decreased to-day—the loss we are talking about?

Mr. IMLAY. I mentioned that, I believe, in my memoranda by saying that the reports which we are receiving from our outport agents, our foreign agents—each of our agents is required to send in promptly an over and short damaged cargo report—which indicates the condition of the cargo discharged from a vessel at his port.

Mr. EDMONDS. The reduction in loss is partially attributable to these experienced men getting back again, I suppose?

Mr. IMLAY. It is due to the general betterment of conditions.

Mr. EDMONDS. Does that come about naturally, or have you taken any particular pains to bring it about?

Mr. IMLAY. We are spending a great deal of money—I am sorry for the moment that I am unable to give you the figures—in protecting the property that is intrusted to our care. That money is not only spent in watching cargo in New York but also in the extra compensation which we pay our officers on board the ships, quartermasters, wireless operators, etc., to watch the cargo in conjunction with the watchmen whom our agents employ for that purpose.

Mr. EDMONDS. This better condition that you speak of is not reflected, according to the testimony given us on Monday by the insurance people, in the insurance rates. Is it the custom for insurance rates only to reflect a condition like this at some later date?

Mr. IMLAY. That has been my experience.

Mr. EDMONDS. That is, their returns will show then that they can reduce the rates as the better conditions exist?

Mr. IMLAY. That is true.

Mr. EDMONDS. Just at the present they are reflecting, possibly, the rates of two or three months ago—the losses of two or three months ago?

Mr. IMLAY. I would say the losses obtaining in a period even further back than two or three months ago.

Mr. EDMONDS. As this condition of affairs improves the rates will naturally improve along with it?

Mr. IMLAY. That is my expectation.

Mr. CAMPBELL. May I finish with our part of this before you go into cross-examination?

Mr. EDMONDS. Very well. It is not cross-examination, however, but simply asking questions.

Mr. CAMPBELL. We have so designated it in the past. What I mean is this, Mr. Edmonds: There are many phases of the subject that he has not covered yet, that I want him to cover.

Mr. EDMONDS. Very well, let him cover them fully while we are at it.

Mr. KIRKPATRICK. I do not want to terminate the examination, but this is right in line with what you have said. You said you were spending a great deal of money to protect your shipments. Does that refer to these special shipments that you were speaking of, or generally?

Mr. IMLAY. Generally.

Mr. KIRKPATRICK. Now, may I ask you this: How much does the general run of freight that you have get the benefit of the special precautions which you describe, which you take with regard to this special kind of freight?

Mr. IMLAY We have what we call a "special cargo list."

Mr. KIRKPATRICK. Yes, you explained that. But how much of those precautions benefit the bulk of the freight that you get? For instance, you have special watchmen for that class of freight; are those watchmen in a position to take care of the bulk freight, too?

Mr. IMLAY. No.

Mr. KIRKPATRICK. Why not?

Mr. IMLAY. Those men are engaged for that specific purpose.

Mr. KIRKPATRICK. But why not? Are they not on the same wharves?

Mr. IMLAY. Yes; but the wharves have quite a large area. If I may continue, we have what we call a "special cargo list" in which is enumerated various classes of commodities which are of more or less valuable nature, and even though a shipper may not declare the value of the goods on his shipping receipt, we give these higher-valued packages better attention than the low-valued packages.

Mr. KIRKPATRICK. I did not mean to go over that. I was only wondering how far the bulk of the cargo got the benefit of that care that you took of the special cargo.

Mr. LOINES. You carefully watch all of your general cargo, do you not? You have a staff of watchmen on your pier?

Mr. IMLAY. We have a very large staff of watchmen, and we watch the cargo as carefully as it is possible to do.

Mr. RUSH. This special arrangement for the care of extra valuable cargo, does that apply to inward and outward bound cargo, or only to inward, to the United States?

Mr. IMLAY. To outward principally. The bulk of the cargo that we bring into the United States is raw material, and we have but very little use, I may say—a limited use—for the special cargo compartments on the northbound freight.

Mr. RUSH. Do you find that the taking of those special precautions does, as a matter of fact, reduce the loss at all?

Mr. IMLAY. Oh, yes.

Mr. RUSH. It does?

Mr. IMLAY. Yes, sir.

Mr. RUSH. That is all I wanted to ask.

Mr. CAMPBELL. Going back to your South American situation, where, physically, does the control which the ship is able to exercise over the delivery of the cargo cease?

Mr. IMLAY. At the time of release of the cargo from the ship's tackle.

Mr. CAMPBELL. To what ports do your ships ply?

Mr. IMLAY. Principally to Cuban and Mexican ports.

Mr. CAMPBELL. In the Cuban ports are you able to discharge on wharves or are you compelled to lighter?

Mr. IMLAY. In most of the Cuban ports to-day it is possible for us to make delivery directly to the wharves.

Mr. CAMPBELL. What sort of labor do you employ down there for stevedoring?

Mr. IMLAY. Native labor.

Mr. CAMPBELL. Spanish labor?

Mr. IMLAY. Cubans in Cuba and Mexicans in Mexico.

Mr. CAMPBELL. Are there any white laborers to be employed?

Mr. IMLAY. In a limited number.

Mr. CAMPBELL. Where does the cargo go when it leaves the ship's tackle on the wharf?

Mr. IMLAY. Directly into the custody of the customs officials.

Mr. CAMPBELL. Where do the customs officials take custody of the cargo?

Mr. IMLAY. At the time of release of the cargo from the ship's tackle. I may add to that should a package be broken in discharge, the carrier is sometimes prevented by the customs officials from touching it. In other instances we are permitted to have our coopers place it back in good condition. In many instances, both in Cuba and in Mexico, we are prevented from touching the cargo once it leaves the ship's tackle.

Mr. CAMPBELL. Once it leaves the ship's tackle, are you able to exercise any physical control over it whatsoever?

Mr. IMLAY. In Habana now; yes.

Mr. CAMPBELL. To what extent?

Mr. IMLAY. We have our own terminals there, and we act—our agent at that point acts under the jurisdiction of the collector of customs in the stowage and custody of the cargo in our own warehouse, in the customhouse, or bonded warehouse.

Mr. CAMPBELL. Outside of the port of Habana, are you able in any of the other ports to exercise any physical control over the cargo after it leaves ship's tackle?

Mr. IMLAY. With the exception of Santiago, Cuba; no.

Mr. CAMPBELL. Does the same condition at Santiago prevail as at Habana?

Mr. IMLAY. In a limited manner; yes.

Mr. CAMPBELL. What is there that the steamship company could do to assure against theft or pilferage after the cargo leaves ship's tackle at those outports that you do not do now?

Mr. IMLAY. Nothing that I know of.

Mr. CAMPBELL. Coming back to the receipt of cargo here, I would like to have you explain to the committee the physical process of your receiving cargo. What is done with it when it comes in on the truck; who unloads it; where is it stored; what watch is given to it? I want the whole process until it is placed in the ship traced.

Mr. EDMONDS. This is in New York?

Mr. CAMPBELL. In New York; yes. That is, ordinary cargo; leave aside this high-grade cargo.

Mr. IMLAY. Ordinarily, when truck freight is being delivered, the truckman drives down onto the pier and discharges his freight onto the wharf. As he drives down the pier a check clerk is tolled off by the foreman as tally clerk to record the cargo which is discharged by this truckman. He takes the receipt which the truckman has in triplicate, and as each package is discharged from the truck he measures it, compares the marking with the marks as they appear on the shipping receipts, and the property is then either placed directly into the steamer or is placed at a point designated by the stevedore, pending its removal into the ship.

There are on our piers certain stations—by that I mean the piers are divided off—and in each division a watchman or more, if necessary, is employed to fully protect all property in that section.

On the steamers we have one watchman in each of the cargo compartments where cargo is being stowed, and another watchman on the deck to supervise the situation generally and to relieve any of the watchmen below in the event it is necessary for them to leave their station.

Mr. EDMONDS. Are they engaged in counting the cargo or do they watch it only?

Mr. IMLAY. They are engaged in watching the cargo only. As a matter of fact, they watch the men who are handling the cargo. They know that the cargo will look out for itself if they can watch the men who are handling it.

In addition to these watchmen, on each steamer we have a roundsman and on each pier we have a lieutenant. All the officers from roundsman up to the inspector in charge are professional policemen, men who have been policemen in the Metropolitan police force, and were retired from the service after spending the prescribed length of time which entitles them to retire. The man in charge of the police force is an inspector, an ex-inspector of police, and we feel that everything that is humanly possibly to be done is being done to protect the cargo at that end.

Mr. CAMPBELL. Is your warehouse, your shed, an open shed, or is it one with closed doors?

Mr. IMLAY. The piers are all covered piers and are built as most steamship piers are, with sliding doors on the sides.

Mr. CAMPBELL. Are those left open?

Mr. IMLAY. They are all kept closed, except when cargo is being passed to or from a ship or a lighter alongside.

Mr. EDMONDS. Do you use your own employees to load?

Mr. IMLAY. Entirely so.

Mr. EDMONDS. Or do you contract with stevedores?

Mr. IMLAY. No, sir; we use our own employees.

Mr. EDMONDS. Is that true of the cars that come alongside, the lighter cars? Do you use your own men there?

Mr. IMLAY. Altogether.

Mr. EDMONDS. They are all your own employees?

Mr. IMLAY. Yes, sir.

Mr. EDMONDS. Now, the material that is brought to your pier by wagon, you have nothing to do with that? You simply get it at the pier and receipt for it there?

Mr. IMLAY. We receive all our cargo at our piers.

Mr. EDMONDS. You do not send any wagons out to collect it, or anything like that?

Mr. IMLAY. The company as a steamship company does not. We have, for the convenience of the shippers, a freight-forwarding department which, to facilitate the handling of shipments having their origin in an interior point, looks after the movement from railroad to pier in the manner followed by the outside steamship forwarding agents.

Mr. EDMONDS. Your interest in that line as a forwarding line does not prevent you from taking the wagon load of goods brought to that forwarding line and looking through it to see that it is perfectly well packed?

Mr. IMLAY. These packages, or that property which is received, receives identically the same treatment as if we had no concern in the movement other than as carriers.

In a few other instances we lighter our own cargo. We have our own lighters and we sometimes make arrangements with shippers to go to certain points in the New York harbor or the adjacent waters and pick up freight in large quantities which is to move over our vessels. That cargo, when it arrives alongside of a vessel or a pier, whichever the case may be, receives and is accorded the same treatment as if it were received from our own lighters.

Mr. CAMPBELL. When cargo comes alongside your pier by lighter, what is physically done then?

Mr. IMLAY. The cargo to be discharged onto the pier or onto the steamer?

Mr. CAMPBELL. Supposing a lighter is brought into your ship with a cargo for export, whether the steamer be there or be not there, in both cases, what do you physically do in each case?

Mr. IMLAY. If a lighter is brought alongside of our steamer—and we endeavor to have all lighter freight delivered directly to the steamers—it is discharged—the cargo from the lighter is discharged immediately into the vessel.

Mr. EDMONDS. Is that checked as it goes in?

Mr. IMLAY. Our tally clerks are sent down onto the lighter, where they measure and inspect each package as if it were being delivered by truck.

Mr. CAMPBELL. What receipts do you give for a cargo from a lighter?

Mr. IMLAY. Substantially the same as the receipts given for truck freight.

Mr. CAMPBELL. If there is any evidence of outside damage, breakage, staining, what do you do?

Mr. IMLAY. Exceptions are placed on the receipts.

Mr. CAMPBELL. Now, if you do not put your cargo directly on board the ship, and a lighter comes into your slip, what do you do with it then?

Mr. IMLAY. Discharge it onto the pier, where it is handled the same as if it were being delivered by truck.

Mr. CAMPBELL. Are these doors shut, closed at night?

Mr. IMLAY. Each and every night.

Mr. CAMPBELL. Now, what control have you—whose employees discharge the trucks as they come onto the dock?

Mr. IMLAY. The truckmen are presumed to discharge the freight onto the wharf. Sometimes we assist them.

Mr. KIRKPATRICK. That is after it has been checked?

Mr. IMLAY. No; as it is being delivered onto the wharf.

Mr. KIRKPATRICK. You check it as it is landed?

Mr. IMLAY. As it is actually landed on the property.

Mr. CAMPBELL. Is it physically possible or practicable for the steamship company to open each package as it is brought onto your dock, to determine whether or not it contains the alleged goods?

Mr. IMLAY. It is a physical impossibility.

Mr. CAMPBELL. After the goods are loaded onto your steamers, how are they cared for on board the ship during the voyage?

Mr. IMLAY. The cargo compartments, as soon as the vessel is loaded, or each compartment is loaded, are securely locked; the keys for the various hatches and compartments are placed in the custody of the chief officer: the hatches are removed twice each day en route—at 8 o'clock in the morning and at 4 in the afternoon; the chief officer, personally, accompanied by the ship's carpenter, goes into each compartment, with the exception of the special-cargo compartment, for the purpose of sounding the wells and taking the temperature of each cargo compartment.

Commissioner LISNER. Who accompanies the officer into the compartment? I did not hear that.

Mr. IMLAY. He is accompanied by the ship's carpenter.

Mr. CAMPBELL. During the war and since the armistice what has been the condition, the labor condition, with which your companies have been confronted as respects the labor which checks and handles the cargo received onto your docks and delivered from your docks—that is, labor on your docks that checks the cargo and does the physical handling?

Mr. IMLAY. Do I understand you to mean the tally clerks?

Mr. CAMPBELL. Yes; the tally clerks and your stevedores during the war and up to the time this recent shipping depression came, when shipping was booming, what was the condition of the labor market and the character of labor that you were getting? Where did you go to get it?

Mr. IMLAY. It was most unsatisfactory.

Mr. CAMPBELL. Why? Just explain in full detail that situation.

Mr. IMLAY. Because the markets afforded labor generally a chance to do pretty much as it cared to. We lost a great many of our older employees during the war and in the period following immediately after the war and were compelled to take such labor as would be sent us by the unions of which the men were members.

Mr. CAMPBELL. Why didn't you employ nonunion labor?

Mr. IMLAY. The conditions generally would not permit that.

Mr. CAMPBELL. Were you able to make any personal selection of the union men that were sent to you?

Mr. IMLAY. To a limited degree only.

Mr. CAMPBELL. Now, has there been any change in that condition?

Mr. IMLAY. The condition has greatly improved. We are picking and choosing to a large extent now.

Mr. CAMPBELL. In the days of the war and following them what control did you have over the selection of those who loaded the trucks on inward cargoes to New York? Were they your loaders that loaded the trucks?

Mr. IMLAY. No; we had no control over them.

Mr. CAMPBELL. Have you to-day?

Mr. IMLAY. Substantially none.

Mr. CAMPBELL. Why? What is this condition? Explain it fully.

Mr. IMLAY. The loaders and cargo handlers for the shippers are men employed by the consignees and are picked up more or less carelessly along the water front; therefore, the only control that we may have over the men is to prevent them from committing any depredation.

Mr. EDMONDS. This is not here you are talking about now?

Mr. IMLAY. Yes; in New York.

Mr. EDMONDS. You are speaking about unloading incoming cargo?

Mr. IMLAY. Yes; this is cargo that is being delivered to consignees, either on their lighters or on trucks, so our authority is limited to watching to see that no harm befalls the property in which they are interested.

Mr. EDMONDS. Your employees still check out, do they not?

Mr. IMLAY. Yes, sir; entirely.

Mr. EDMONDS. You still keep your checking records all the way through?

Mr. IMLAY. Yes.

Mr. CAMPBELL. Are these records all preserved by your company?

Mr. IMLAY. For five years; yes.

Mr. CAMPBELL. Have you ever refused access to them to any shipper who applied for them?

Mr. IMLAY. I never have.

Mr. CAMPBELL. Or to these carriers or their lawyers.

Mr. IMLAY. Some of the underwriters' representatives may have refused.

Mr. CAMPBELL. Is there anything that you know of that can be done to more safely watch and care for the cargo, both inward and outward, than what your company is doing to-day?

Mr. IMLAY. Not a thing.

Mr. CAMPBELL. Wherein is it defective, and wherein can it be cured?

Mr. IMLAY. We claim that our system is not defective in that if we find a condition that can be improved the improvement is immediately made.

Mr. CAMPBELL. Where are those losses occurring, then? Where is the theft being made and pilferage being committed?

Mr. IMLAY. Largely at the ports of destination. We have not the same control over the cargo at the out ports that we have in New York. In most of the Latin-American countries the men engaged

along the water fronts, whether it be in the capacity of a foreman of stevedores, a laborer, a dock clerk, or a watchman, they are in a large measure related. Therefore, we can not obtain the same degree of efficiency in the care of the property at the foreign ports that we look for and obtain in New York.

Mr. EDMONDS. Let me ask two questions at this point. Mr. Imlay, with that system you get everything on board and you take everything off. Have you found at any time any class of pilferage by the crew?

Mr. IMLAY. Yes; we found a number of cases. I mentioned some time ago, I think, Mr. Chairman, that it was physically impossible to stop pilfering entirely.

Mr. EDMONDS. But is it to a serious extent or is it limited to taking something like a couple of dozen out of a gross, or something like that?

Mr. IMLAY. If given the opportunity, they will steal the entire contents of a box and destroy the container.

Mr. EDMONDS. You have lost cases?

Mr. IMLAY. Yes; and we have known of pieces of boxes being found at the last port when the ship was being cleaned up for the loading of cargo that could, possibly, had they been found in their entirety, have been identified as the containers which originally contained dry goods and general merchandise.

Mr. EDMONDS. You have had trouble then with the crew and yet had to keep your hatches open a couple of times during the day. Have the crew any access to the cargo?

Mr. IMLAY. During the abnormal conditions there were instances where the crew had forced the locks and gotten into the cargo compartment and pilfered the cargo, but the same conditions obtained with the crews which obtained with the longshoremen and tallymen that we employed. We had to take what was available, and what was available was not of a very desirable quality.

Mr. EDMONDS. Have you been able to hold down that pilferage by the crew now at the present time?

Mr. IMLAY. To a large extent; yes.

Mr. EDMONDS. It still exists, though?

Mr. IMLAY. Very slightly, if at all.

Mr. EDMONDS. When you find a loss like that do you find who took it?

Mr. IMLAY. We have found cargo, which we believe has been stolen from the cargo department, in the possession of members of the crew, but we have never been able to obtain a conviction. Although we have had the men arrested, the Federal district attorneys have been disposed to give them the benefit of any doubt, and unless we could prove that the property actually came out of a given package we would be unable to obtain a conviction; so we have never been able to successfully prosecute any of these.

Mr. EDMONDS. One thing strikes me as a peculiar coincidence. I do not know whether there is anything in it or not. It seems as if this tremendous wave of pilferage and stealing that started in with shipping has all come about since the passage of the La Follette Act. Is there any lack of discipline occasioned by that act?

Mr. IMLAY. The masters say yes. The masters almost to a man claim they no longer have control over their crews.

Mr. EDMONDS. Is this true of the old masters, not talking of the new masters?

Mr. IMLAY. The old shipmasters; the men who have been masters for many years.

Mr. EDMONDS. Men who know their business.

Mr. IMLAY. Yes.

Mr. EDMONDS. It just seems rather peculiar that after 1915–16, when the La Follette bill was put into force, that your losses should leap up. Of course the war was on at that time. It might be occasioned by the war.

Mr. IMLAY. It was the result of a combination of conditions.

Commissioner LISSNER. I think the witness has given plenty of good reasons for a change in the conditions without attributing it to the La Follette Act.

Mr. CAMPBELL. Will you tell me how many steamers your company operates?

Mr. IMLAY. I believe we have 18 of our own.

Mr. CAMPBELL. And at the peak of your service how many of the Shipping Board vessels did you operate?

Mr. IMLAY. I do not want this to be accepted as authentic, but if my memory serves me right we operated some 78 Shipping Board vessels at one time in addition to those owned and chartered.

Mr. EDMONDS. Do you find the other ships of other nations, traveling in the same routes that you are in, complain in the same way about the customhouse situation?

Mr. IMLAY. My inquiries have resulted in satisfying me that we do not suffer to any greater extent than any of the other lines engaged in the same trade, and I am inclined to believe that we have less difficulty than a great many.

Mr. EDMONDS. Do you think that our present diplomatic situation with Mexico has anything to do with it?

Mr. IMLAY. I would rather not pass on that.

Mr. CAMPBELL. If the liability of your company is increased along the lines demanded by our underwriting friends, is that going to cure the situation?

Mr. IMLAY. May I have that question again?

Mr. CAMPBELL. If the liability of your company is increased by making you responsible to a higher degree for these thefts and pilferages, as requested by the underwriters and shippers, is that in any way going to increase the care and caution which you are exercising now in looking after these goods?

Mr. IMLAY. It can not cause us to give the property any greater care than we are giving now.

Mr. JONES. I understand that the specially cared for merchandise showed much less pilferage losses than ordinary. May I ask how much the additional charge is as compared with the original charge to take care of that specific increased care?

Mr. IMLAY. You mean to Cuba?

Mr. JONES. Anywhere. Is it any general percentage?

Mr. IMLAY. No: different routes call for different rates. We are charging $2\frac{1}{2}$ per cent now to Cuba.

Mr. JONES. That is $2\frac{1}{2}$ per cent additional?

Mr. IMLAY. Ad valorem.

Mr. JONES. That is the regular charge?

Mr. IMLAY. That is the charge we are asking now.

Mr. JONES. That is the regular charge. Then, to make this special arrangement, merchandise that is especially cared for, how much do you ask for that?

Mr. IMLAY. I am afraid I did not answer your question properly. The tariff rate, it is necessary to say that I am not familiar with that. That is the rate. I am not familiar with that but, in addition to that, the charge of 2½ per cent ad valorem is to take the extra risk involved.

Mr. JONES. The 2½ per cent of the value of the merchandise or the full price of the merchandise?

Mr. IMLAY. Yes.

Mr. JONES. And that apparently covers the major part of your pilferage situation?

Mr. IMLAY. No; I said that this special cargo that we were carrying was in a large measure safely delivered at the destination.

Mr. JONES. That means the same thing.

Mr. IMLAY. I do not understand so.

Mr. JONES. The pilferage losses that you discover are on the regular cargo in most part?

Mr. IMLAY. Very largely.

Mr. JONES. And there is a comparatively negligible amount on this special?

Mr. IMLAY. Quite right.

Mr. JONES. And the 2½ per cent ad valorem charge makes it possible for you to take the care of the merchandise that will produce that result?

Mr. IMLAY. That is true.

Mr. KIRKPATRICK. What do you do with the outports, with the special cargoes that you speak of, that you do not do with the regular cargoes?

Mr. IMLAY. At each of the ports at which our vessels call regularly we have our own organization. By that I mean we have our agents and we have our own tallymen. To the best of our ability we have our own watchmen and when the special cargo is about to be discharged, the representative on board, whether it be the purser or one of his assistants or one of the deck officers goes into this special compartment with our chief tally clerk who checks the cargo out and makes a delivery of that in a special manner to the customers, at the same time signing for the property in the condition as found.

Mr. KIRKPATRICK. What do you mean by a special manner?

Mr. IMLAY. Seeing that it is delivered all at one time alongside of the ship that the custom officials' attention is called to that as being special cargo.

Mr. KIRKPATRICK. Who is in charge of that particular operation?

Mr. IMLAY. The chief tally clerk is the one who receives it.

Mr. HICKOX. Would it not be possible for you to take another cargo on any one of your ships and deliver on the basis of this special cargo that you have described?

Mr. IMLAY. Would it or would it not?

Mr. HICKOX. Would it?

Mr. IMLAY. I do not believe so.

Mr. HICKOX. Have you the physical ability to do it?

Mr. IMLAY. We have not.

Mr. LAWS. Mr. Imlay, with the precautions that you have taken, which seem to be rather good, you get pretty good results, both on the special cargo and on the general cargo. Is not that so with respect to pilferage losses?

Mr. IMLAY. Are you speaking of the present time or the past?

Mr. LAWS. The present time.

Mr. IMLAY. Yes; we get good results.

Mr. LAWS. You get good results?

Mr. IMLAY. Yes.

Mr. LAWS. Have you increased rates to shippers, in consequence of these precautions you are taking as to watchmen and checking and all that sort of thing, in any way?

Mr. IMLAY. Yes: quite recently we increased the ad valorem rate from 1 per cent to 2½ per cent.

Mr. LAWS. That is, the special, high-grade stuff?

Mr. IMLAY. Yes.

Mr. LAWS. But on the ordinary cargo have you increased your rates any?

Mr. IMLAY. I am not prepared to discuss rates. That is a traffic proposition.

Mr. LAWS. Are you able to compete with other lines at the rates you are charging? Are you able to compete with other steamship lines?

Mr. IMLAY. I think so.

Mr. LAWS. That is what I want to get at. So that, notwithstanding this extra expenditure of money involved in the extra precautions you take, you are still able to compete successfully with other lines?

Mr. IMLAY. I would like to say in reply to that that our competitors are largely American lines.

Mr. LAWS. I do not care what lines they are. I say you are able to compete successfully with them.

Mr. IMLAY. We feel that we are.

Mr. LAWS. Have you in your bill of lading—have you one of your bills of lading with you?

Mr. IMLAY. No; I have not.

Mr. LAWS. Have you in your bills of lading the ordinary exemptions limiting liability to $100?

Mr. IMLAY. Yes.

Mr. LAWS. And the limitations against all of these various things that have been detailed in other bills of lading—substantially, I mean?

Mr. IMLAY. Yes; but permit me to say in that connection that the Ward Line has never yet attempted to avail itself of any of these conditions if it could be determined by its own records that the loss had occurred as a result of negligence.

Mr. LAWS. Of its negligence—I see. So that so far as those provisions in your bill of lading are concerned where it was determined that it was the result of the Ward Line's negligence, they are a dead letter?

Mr. IMLAY. I would not say that.

Mr. CAMPBELL. That is argumentative?

Mr. IMLAY. I would not say that.

Mr. LAWS. But you do not insist on them?

Mr. IMLAY. I think the answer I gave to the preceding question may take care of that.

Mr. LAWS. That is up to you. If you do not care to answer it, do not answer. It is entirely up to you.

Mr. IMLAY. All right.

Mr. LAWS. You do not care to answer that?

Mr. IMLAY. Not any more than I did in the preceding question.

Mr. LAWS. Do you decline any claims, Mr. Imlay, where you find that the losses occurred from your negligence, or the damage occurred, as the case might be, because notice of claims were not given in accordance with the bill of lading?

Mr. IMLAY. As a practical proposition, no. There may have been some exceptions.

Mr. LAWS. And that applies also to cases of nondelivery and theft and pilferage?

Mr. IMLAY. I do not believe at this time I would make any distinction between them.

Mr. LAWS. If that, in fact, is the practice that you have adopted, have you any serious objection, or has your company, to eliminating the amount of liability provision—the limitation of liability to $100—in the case of your negligence?

Mr. IMLAY. I do not.

Mr. CAMPBELL. That is arguing. He is here to exhibit facts. It is not for an executive officer to dictate the policy.

Mr. EDMONDS. I think the witness is perfectly justified to say that he does not wish to answer questions. This is not a judicial matter.

Mr. LAWS. You do not care to answer the question?

Mr. IMLAY. No.

Mr. EDMONDS. The witness may not know or may not be able to answer the question.

Mr. LAWS. If he says he does not know, all right.

Mr. EDMONDS. I do not think it is fair to insist on the question, when the witness says that he is not justified in answering it. We do not want any witness to answer anything he does not wish to.

Mr. LAWS. Exactly so, and if he says he does not care to that ends it so far as I am concerned. Can you tell us, Mr. Imlay, what percentages of the claims that have been presented to your company for loss, nondelivery, and pilferage have been paid, as compared with what percentage you declined to pay, if any, in the last five years—approximately?

Mr. IMLAY. That is too broad a question to be answered.

Mr. LAWS. In the last year? In what feature is it too broad—for your purposes, I mean to say?

Mr. IMLAY. The term "claim" is too indefinite. We receive many claims for packages, which it is proven have been subsequently delivered. The claims are withdrawn, and we do not keep any such figures.

Mr. LAWS. I mean claims that have not been withdrawn and where the packages have not been subsequently delivered?

Mr. IMLAY. I will answer your question in this way. To the best of my knowledge and belief, every just claim, every claim with merit, which has been presented to the Ward Line, has been paid.

Mr. LAWS. That is all

Mr. BURCHMORE. You gave your figures there? Can you make any figure even though it is an estimate, as between the claims that are for pilferage and theft, either of parts of cases or whole cases, and claims that are for other things, such as damaged freight, rough handling, or leakage, or anything of that kind?

Mr. IMLAY. I will say to that that the amounts paid for alleged damage claims were very small, inconsequential.

Mr. BURCHMORE. What I meant was the proportion or percentage of the amount that was theft and pilferage?

Mr. IMLAY. I would not care to attempt to approximate.

Mr. BURCHMORE. You could not even indicate whether it was 20 per cent or 50 per cent, roughly?

Mr. IMLAY. No, sir.

Mr. BURCHMORE. It was a large item, however, was it?

Mr. IMLAY. Theft and pilferage?

Mr. BURCHMORE. Yes.

Mr. IMLAY. Yes; I would say so.

Mr. BURCHMORE. I mean the payments were large?

Mr. IMLAY. Yes.

Mr. BURCHMORE. Just one other question, if you are willing to answer it. Do you see any reason why a steamer line such as yours should not assume, in its contract with the shippers, full responsibility, excepting for marine perils, for delivering at destination to the consignee or the customhouse all of the goods which it actually received at the point of origin?

Mr. IMLAY. Is not that substantially the same question that this gentleman asked?

Mr. CAMPBELL. It is a matter of policy.

Mr. BURCHMORE. It is a very broad question of a fair kind; that is, what objection there is to a plain contract providing for that sort of thing. This gentleman can give us the practical side of it.

Commissioner LISSNER. I think the witness ought to be allowed to answer questions without interference by counsel. He is perfectly able to take care of himself.

Mr. EDMONDS. If this witness does not want to answer, and he testifies that it is a matter of policy for the company to decide, it is hardly fair to ask him.

Mr. IMLAY. That is substantially the same question which this other gentleman asked that I did not answer.

Mr. BURCHMORE. You prefer not to answer it?

Mr. IMLAY. Yes.

Mr. EDMONDS. I would like to ask Mr. Imlay one question. You are asking a $2\frac{1}{2}$ per cent ad valorem export rate for your special storage room for taking care of packages. That has nothing to do with insurance whatever. In other words, you accept no more responsibility on that package at the 2 per cent rate than you did before?

Mr. IMLAY. We waive the limit of liability.

Mr. EDMONDS. In other words, you assume the full liability?

Mr. IMLAY. Assume the full responsibility for the goods.

Mr. EDMONDS. In other words, you virtually then insure the safe delivery of these goods for $2\frac{1}{2}$ per cent?

Mr. IMLAY. That has been called, I believe, an insured bill of lading.

Mr. JONES. I called attention to the fact in talking with our member concerns that our pilferage claims over the old-established lines amounted to 3½ per cent of the value of our merchandise, but the reason that I asked that question was to get the percentage relationship between the additional charge and what our pilferage claims have been in the last 12 months. I find that our pilferage claims have been 3½ per cent on the old lines and the additional charge being 2½ per cent, we being the gainer by 1 per cent.

In addition to that I feel that we would stand a great deal better show to give service to our customers and we would rather pay 2½ per cent to the steamship company than pay it in the form of a 5 per cent charge to the insurance company in order to get my money back and not deliver merchandise.

Mr. EDMONDS. And not only save money, but get a steamship company that will guarantee your goods.

Mr. HERRICK. There have been several references here to-night to "our" lighters. I would like to ask Mr. Imlay whether those are owned or controlled by the Ward Line?

Mr. IMLAY. Just let me get that question.

Mr. HERRICK. You have referred several times in speaking to "our" lighters?

Mr. IMLAY. Yes; meaning the lighters in New York.

Mr. HERRICK. I do not know; wherever they are. You refer to them as "our" lighters.

Mr. IMLAY. Those lighters that were referred to in that matter are owned or controlled by the Ward Line.

Mr. HERRICK. Not by a subsidiary?

Mr. IMLAY. No. Pardon me; owned or controlled by the Ward Line, possibly through a subsidiary.

Mr. HERRICK. What is the method of delivery at destination as regard lighters? Who selects those lighters?

Mr. IMLAY. That depends largely upon conditions. There are certain classes of cargo that we handle, which is delivered at ship side into the consignee's own lighters or lighters chartered by them.

Mr. HERRICK. In that case the consignee would select or furnish them?

Mr. IMLAY. That is right.

Mr. HERRICK. In other cases, who selects them?

Mr. IMLAY. Usually the steamship company.

Mr. HERRICK. The consignor has no choice in the matter, has he?

Mr. IMLAY. He might have some choice, but to my knowledge they have never exercised the right.

Mr. HERRICK. These watchmen that you spoke of, do they belong to a union?

Mr. IMLAY. The watchmen?

Mr. HERRICK. Yes.

Mr. IMLAY. No, sir; not that I know of.

Mr. HERRICK. They are exclusively pensioned police officers?

Mr. IMLAY. No; the men of the higher grades are either retired policemen or retired firemen. The men who do the actual watching are men whose character the police department has looked very carefully into and I know not what their previous occupation may have been. It is in the record, but I do not know.

Mr. HERRICK. These watchmen have a chance to see all sides of the docks on which the goods are stored; that is, the waterside as well as the land side?

Mr. IMLAY. The outsides of the wharves are kept free to a large extent from any vessels which are inactive, and when there are any vessels alongside there are watchmen placed at advantageous points so that they can properly supervise what goods are in and about.

Mr. HERRICK. On the waterside?

Mr. IMLAY. Yes.

Mr. HERRICK. These doors to your sheds are closed at night? Are they locked?

Mr. IMLAY. To all intents and purposes they are locked. They are mammoth affairs and it requires considerable power to open them.

Mr. HERRICK. They can not be swung open at the bottom?

Mr. IMLAY. No.

Mr. HERRICK. They are not locked, that is, with a padlock?

Mr. IMLAY. Not with a padlock.

Mr. HERRICK. Thank you.

Mr. BURCHMORE. One more question. The National Industrial Traffic League has tried to make its position clear and we would like to ask that Mr. Campbell or some one else for the shipowners would answer this question that I put to the witness. What is the reason or fair objection to the giving by the steamer of a plain contract under which it assumes responsibility to deliver to destination all of the merchandise that it receives at the point of origin, subject alone to marine perils: by which I mean errors of navigation, the act of God, and everything of that sort?

Mr. CAMPBELL. There will be a witness who will go into that. Mr. Edmonds, it is our intention to cover that fully; Mr. Hickox and others are going into that.

Mr. EDMONDS. Mr. Hickox will cover that to-morrow and it will appear in the testimony and you will be able to read it.

Mr. BURCHMORE. That is our point and we want to be sure their answer is there.

(Thereupon, at 11 o'clock p. m. the committee adjourned until 10 o'clock a. m. Wednesday, July 20, 1921.)

SUBCOMMITTEE OF THE COMMITTEE ON THE
MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, Wednesday, July 20, 1921.

The subcommittee met at 10 o'clock a. m., Hon. Frederick R. Lehlbach (chairman) presiding.

Mr. LEHLBACH. The Chair is informed that there are two gentlemen, representatives of the shippers, who found it impossible to get here yesterday or the day before, when those representing the shippers' interests were heard, and who desire to be heard at the present time. I believe they are Mr. Hylander and Mr. Merriam. Is that correct?

Mr. HYLANDER. Yes, sir.

STATEMENT OF MR. C. G. HYLANDER, CHICAGO, ILL., REPRESENTING WILLIAM WRIGLEY, JR., CO.

Mr. LEHLBACH. The hearings necessarily must be concluded to-day, and we have quite a number of those representing the shipowners still to be heard, and therefore we would like you to be as brief as you conveniently can in the development of what you have to say.

Mr. HYLANDER. Mr. Chairman, I want to give you just an oral statement now and later in the day to file a written statement with you.

Mr. LEHLBACH. That will be perfectly acceptable.

Mr. HYLANDER. I represent William Wrigley, Jr., Co., exporters of chewing gum to all parts of the world.

Mr. LEHLBACH. Where are you located?

Mr. HYLANDER. In Chicago. The exports of our company for 1919 were $1,700,000; that is the value of the gum exported. In 1920 the value was $1,400,000. I mention that just to show we are exporters interested to that extent. The total chewing gum exported for the year 1920 for all exporters from this country was $2,612,540.

The facts that I wish to call your attention briefly to are some of the difficulties that attend the exporting from our country at the present time—as I believe that is the nature of this hearing to a certain extent—one of the first things I want to mention is the matter of the steamship liability. Every steamship company fixes its own terms of the liability, and we believe there should be a general fixed liability for commodities the same as the railroads have—general terms, as far as possible.

For example, in our case we ship a box of chewing gum worth $55. The French line, just to give an illustration, only have a liability of $5 per cubic foot, or $100 per package.

Another drawback to exporting is the bill of lading continuity is not guaranteed; that is, where goods are handled by two or three steamship lines it is extremely difficult to fasten the liability for the shortage. If I may, I will just give briefly an example as to how that works out. We made a shipment from Seattle to Hongkong, China, in the latter part of 1918. This was handled by the Pacific Steamship Co. in one of their boats to Kobe, Japan, at which port it was turned over to the Japanese line, the N. Y. K. Co. The value of this gum was $87 and consisted of five cases. The Japanese line obtained the shipment at Kobe, Japan, and from what we can learn from the consignees, it was carried in error, overcarried, to Bombay, India. It was then brought back to Hongkong, and arrived there on July 15, 1919, having left Seattle in December, 1918. It arrived with the cases stained with oil, two of them having been broken open and renailed. This had been done, as we found through tracing it, between Bombay and Kobe, Japan.

This shipment had left Chicago the 11th day of October, 1918. Claim was filed with the Wells Shipping Co. in September, 1919, who forwarded the papers to the Pacific Steamship Co. The papers were passed back and forth between the Pacific Steamship Co., ourselves, and the Japanese line, and to date we have not obtained settlement. It seems to be a case where you can not collect from the insurance company. It is not exactly a marine peril; it is just simply negligence on the part of the steamship company—which one we do

not know. It represents pilferage on board of the boat by the employees of the boat line, and we feel that is negligence for which the boat line should pay. We have not been able to establish the responsibility for this loss. I have a letter from the steamship company about it. It may take a minute or two to read it, but I would like to submit that as evidence with my papers.

I have two examples here of the troubles that confront the American exporter in connection with boats owned by the Shipping Board and operated by agents, J. H. Winchester & Co., of New York City, who are supposed to represent the Shipping Board boats. I want to give some facts from these two claims, because I believe it covers most of what I have to say, to show you these difficulties that attend exporting of American goods.

On October 22, 1920, the steamship *Lake Farber* sailed from New York City, through J. H. Winchester & Co., agents. The goods were intended for London. Shipment consisted of 115 cases of chewing gum, each case containing 100 boxes. The boat arrived at Bristol, England, November 30, 1920. There was a loss, so far as the survey showed, of one complete case missing, for which the steamship agents at Bristol accepted liability, and a shortage of 174 boxes, for which a claim was filed, amounting to $102.74, with J. H. Winchester & Co. Now this steamship firm refuses liability for the loss of these 174 boxes on the theory that they act only as agents for the United States Shipping Board; in other words, there seems to be three parties according to their advice—the shipowner, the Shipping Board; J. H. Winchester & Co., the agents; and then our consignees, and they advise that the Shipping Board is represented by the American Steamship Owners' Mutual Protection & Indemnity Association in the settlement of claims. They further maintain that all claims must be O. K'd by this organization.

The clause relating to the filing of claims at destination was complied with. The check for the freight charges was made payable to the order of Winchester & Co.; the bill of lading was issued by Winchester & Co., steamship agents, and signed by the master.

J. H. Winchester & Co. took this matter up with the American Ship Owners' Mutual Protection & Indemnity Association, who claim they are not responsible, as the bill of lading contained the clause stating that the steamer is not responsible for breakage, leakage, or loss of contents. There was a rubber stamp across the face of the bill of lading, as sort of a rider, containing that clause.

The value of this shipment is $4,600. It occupied about 400 cubic feet of space and had a gross weight of about 15,000 pounds. I want to read, very briefly, a couple of letters from Winchester & Co., to show you the position they take in regard to these claims. This is a letter from Winchester & Co., dated March 21, 1921, to ourselves:

> We wish to advise that we act only as agents for the United States Shipping Board, so that your contract is with them rather than with us. It has always been customary (and we believe has been so recognized by other shippers) that where claims arise at the other end that they are handled by the agents of the steamer with the receivers' representatives there, hence in our letter of the 4th instant, where we requested that you pursue the matter from the other end, was not anything out of the way, but commensurate with usual custom.
>
> We have as yet heard nothing from our agents at Bristol relative to this shortage, and undoubtedly they will handle the claim as per usual with the receivers. * * *

For your guidance, the American Steamship Owners' Mutual Protection and Indemnity Association, of this city, represents the United States Shipping Board in the settlement of claims, etc., and before any claims can be paid they must be O. K'd by this organization or their representatives abroad, so that if it should eventuate that the claim is referred to New York for settlement it will have to be made through the medium of the Protection and Indemnity Association.

We believe that the foregoing will give you a general idea as to how claims arising on Shipping Board steamers are handled.

From past experience we find that some little time elapses before settlements are arrived at, undoubtedly due to the fact that the Shipping Board being a large organization the claims are numerous, so that some time is bound to elapse before settlements can be effected due to the fact that the claims must be fully investigated before authorizations for payments are forthcoming. * * *

Then they go on to say they believe this protection association is doing what they can, and continue:

We do not think that it will be necessary for you to pursue this matter under the wording of the Harter Act of 1893, as a settlement will undoubtedly be made if it is found that your claim is a just and correct one.

Now, here is a letter of April 1. I will just give a brief quotation from it. They speak about the delay in the settlement and then they add this line at the end:

We regret to note that until this claim is settled that you will refrain from shipping any more goods over our lines, but we can only tell you that a very great many shippers have claims arise from time to time but who do not for this reason stop shipping in our steamers, they knowing quite well what we have to contend with when dealing with the Government.

That is a peculiar phrase, I think, for a steamship agent who represents the Shipping Board to tell the shipper he may expect all this annoyance because he deals with the Government. That does not sound very good to me.

Mr. EDMONDS. You are going to file those letters?

Mr. HYLANDER. I am willing to if the chairman so desires. I want the chairman to look over this file. I believe, Mr. Chairman, if you went into the foreign shipping situation you would be ready to say something.

Mr. EDMONDS. You can leave the file with us?

Mr. HYLANDER. Yes, sir.

Mr. EDMONDS. You do not need it just now?

Mr. HYLANDER. Not just now; no. I want to quote a few of these extracts here to emphasize this:

We hope that we have made ourselves clear that we are powerless in deciding an issue such as this, due to the fact that we are merely acting as agents for the United States Shipping Board and are subject to their orders as to what steps to take in matters such as these.

That is an extract from their letter of May 20. Another extract from their letter of May 25, 1921:

* * * We have now received advices from the American Steamship Owners' Mutual Protection and Indemnity Association, who are of the opinion that the steamer can not be held responsible for this shortage in view of the clause which appeared upon the bills of lading, viz: "Steamer not responsible for breakage, leakage, or loss of contents," and therefore we can not honor your claim.

I have a similar case. It will just take a few minutes to give it to you. This concerns a shipment on board of the steamship *Frolona*, owned by the Shipping Board and operated by J. H. Winchester &

Co., sailing from New York City September 11, 1920. The shipment consisted of 13,000 boxes of chewing gum, packed in 130 cases. This shipment was worth about $5,200 and had a gross weight of 16,000 pounds and occupied 445 cubic feet. This shipment arrived at destination. We had a survey made and we found that 579 boxes were damaged by oil and water. These were paid for. Then there was a loss by pilferage of 680 boxes, of which 280 boxes were paid for on the 50-per cent basis; and, Mr. Chairman, when you look that file over I wish you would read the part about the 50 per cent.

Mr. EDMONDS. Does not oil make chewing gum more chewy?

Mr. HYLANDER. No, sir; it makes it less chewable. [Laughter.] We recovered a part of that through the insurance company. Claim was filed through our London (England) house. Then there were four cases that arrived empty, and the steamship agents claim that they dissolved in the water. This is an impossibility with our product; a certain part of it, the chicle, is nonsoluble, so that it is utterly ridiculous to say that four cases got there empty and water had taken the contents out. That shows the nature of this correspondence:

> The shippers claim that the four cases for which the wood only was delivered and total contents missing do not come under the heading of "pilferages," but should be claimed from the underwriters, as they state that cases were probably smashed during transit, owing to rough weather.

And, by the way, the party who wrote the letter, it seems he takes joy in the fact that the empty boxes got there. But the gum had been taken presumably by the boat employees.

Another thing that happened in this shipment—there was poor stowage. That is another thing the shippers have to contend with. The men who load the boat seem to be careless. Ocean theft and pilferage seems to be worse now than it ever was. The owners seem to know it and do not apparently take any steps to stop it. In regard to the poor stowage, the shipment was placed with oil and lard. Any man loading a ship should know in stowing a food product it should not be next to oil.

The total loss on this shipment was $581.80. These letters are from James & Hodder, the agents at Bristol, England, who handled the shipment at that end as representing the steamship company. As regards the alleged pilferage or loss of contents, they point out that chewing gum will dissolve in water, and it is reasonable to suppose that some portion at least of the loss would be attributable to this cause.

I also want to file with the committee a little pamphlet issued by the Insurance Co. of North America. It has to do with marine insurance, and contains the idea that nowadays the losses are increasing, insurance rates are going up, steamship companies are not holding themselves liable, and there should be an end to that some time or other. It is an interesting pamphlet. You may have seen it.

Mr. LEHLBACH. I think we have already heard from the Insurance Co. of North America.

Mr. HYLANDER. You do not want me to file that, then?

Mr. LEHLBACH. Yes; you may file it.

(The pamphlet referred to was filed with the committee.)

Mr. HYLANDER. In exporting there seems to be the thought come to our mind that sooner or later a clear bill of lading should be given

that is combined; that is, if it is a shipment from an inland point by rail and water, you should combine it all in one bill of lading that would be a legal binding contract on the rail carriers and the steamship carriers, that would at least bind the steamship company line that leaves our American port. I do not believe you could bind the line leaving the foreign port, England or any other country; but at least the railroad agent should act with full power of attorney for the steamship line which leaves an American port and provide a bill of lading that would satisfy the bankers and be sufficient for financial transactions, such as bill of lading attached to draft.

Then, in regard to noncompetitive steamship lines, where they exist in carrying shipments from the United States ports to foreign ports, and a monopoly is thereby obtained, some control should be held over the steamer rates and conditions should, in no case, be forced upon the consignor which are prohibitive or overburdensome. Rates should be fair competitive rates, the same as if competition existed. In domestic rail transportation you can make a small shipment from Washington, say, to a point in nearby Virginia by rail, where there is no competition, and the act to regulate commerce covers that shipment just the same as it does an important shipment to Richmond or Nashville, where there is competition. The steamship business suffers somewhat on that account: where there is no competition overburdensome restrictions are put on the shippers in the bills of lading.

Some arrangements should be made also to issue bill of lading with a greater leeway between the date of issuance and the date of sailing, especially where goods are on hand for export, to enable the shipper to arrange for financial transactions and permit the arrival in consignee's hands of the original documents before the shipment reaches destination.

Now, as to goods in bond from inland ports. On a through combined bill of lading a declaration of the customs officer at port of exit by the consignor or advice by the railway company of arrival of goods in bond should be sufficient evidence of the notification of the customs officer of the export of the bonded goods, especially where the invoice specifically declares the identical goods, and the respective manifest showing shipment of the goods should be conclusive proof. Where goods are sent in bond and sealed or the car is sealed they have already been inspected by customs authorities as to count or weight.

Then delays, with a shipment moving from, say, Chicago to San Francisco and then by steamer. They sometimes have delays on account of a mix up in the bond arrangements at the port of export.

Then as to the liability of the various steamship lines. This seems to vary considerably. They seem to figure on so much per package. You have probably had evidence here in regard to that. There seems to be need for some uniformity there.

Now, has this hearing any scope in regard to import shipments?

Mr. LEHLBACH. It has not been touched on particularly, but there is no reason why you could not do so, briefly, if you care to.

Mr. EDMONDS. Yes: if it was a loss on an import shipment, it should be taken up at the same time, I think.

Mr. HYLANDER. For instance, in the import of chicle, one of our raw materials, bringing it from Mexico to New York and New

Orleans, the steamship bill of lading carries a clause of $8 a cubic foot. That has been in there for quite a while. The steamship rates, at least during the war and since, have been very high, and that liability has not been extended; it is still kept at that figure. It does not near compensate for a loss. It is our humble opinion that that liability clause should be extended and let the rates take care of that, and provide full liability instead of partial liability. It seems to be almost impossible to take out theft and pilferage insurance. This particular steamship company in the past would take care of that full liability, provided you paid an additional fee of $1\frac{3}{8}$ per cent, based on the value of the goods.

Mr. EDMONDS. Is that the Ward Line?

Mr. HYLANDER. That is the Ward Line.

Mr. EDMONDS. They testified last night that they will take care of the insurance on an insured bill of lading now at $2\frac{1}{2}$ per cent.

Mr. HYLANDER. Two and a half per cent on what?

Mr. EDMONDS. On the value of the goods.

Mr. HYLANDER. That is certainly a high figure.

Mr. EDMONDS. That is a good deal less than $8 a cubic foot.

Mr. HYLANDER. That $8 a cubic foot represents the extreme liability.

Mr. EDMONDS. That is a good deal less than theft and pilferage insurance rates to-day.

Mr. HYLANDER. We had considerable losses in that respect, in regard to imports of chicle, where we are obliged to accept a small amount for considerable losses, and my idea is that has not been changed. Eight dollars a cubic foot has not gone very far in covering our losses.

Mr. EDMONDS. Still, you have protection to the extent of the $8 a foot, and then you can take out theft and pilferage insurance above that.

Mr. HYLANDER. If we want to protect that part of it, if we do not want to accept limited liability, we have to protect it by insurance.

Mr. EDMONDS. And it does not always show that the loss occurs on the steamship, does it?

Mr. HYLANDER. The loss occurs right on the boat; the employees take the stuff.

Mr. EDMONDS. You mean they take a block of it and sell it?

Mr. HYLANDER. They either chew it or dispose of it. That is one of the things we complain about. The steamship company apparently is aware of these thefts, and they seem to be content with their employees, because they know they have this limited liability or no liability and do not take any steps to stop it.

Mr. MERRIAM. Sometimes they steal it and sell it for more money, too, than you receive from the steamship company?

Mr. HYLANDER. Yes; a shipment may be worth to them but $200, and that has been paid. It may be that the actual value of that shipment is $800 and that chicle that has been lost, or certain bags of it, might be found later and may be sold at auction and they get $500 for it whereas they only settled with us for $200.

Mr. EDMONDS. In that case, does not the steamship company pay the amount to you, or to the insurance company, having found the goods?

Mr. HYLANDER. In the case of this particular line we deal with them direct. They hold themselves out for a certain liability and we do not take out additional insurance.

Mr. EDMONDS. Suppose they find the goods afterwards; don't they return the goods to you?

Mr. HYLANDER. Maybe they do and maybe they do not.

Mr. KIRKPATRICK. What do you do in the case of the Ward Line; do you pay that extra 1¾ per cent?

Mr. HYLANDER. No, sir.

Mr. KIRKPATRICK. You just simply ship it as ordinary cargo and take your chances?

Mr. HYLANDER. Yes, sir.

Mr. KIRKPATRICK. Without taking out any insurance?

Mr. HYLANDER. No insurance except the limited liability.

Mr. KIRKPATRICK. You do not take out any insurance?

Mr. HYLANDER. No. I just want to add a word about some marine insurance figures. Your letter mentions that. In handling insurance there is first the marine insurance, then theft and pilferage, and sometimes we have a combination: that is, marine, theft, and pilferage. In looking over our statement here I find in 1920 we insured goods to the value of $1,755,000. The insurance premiums paid were $5,567.43. The losses that we knew occurred amounted to $837. The losses collected for amounted to $673.42. Now, while that loss we incurred may seem small to you, if one big shipment was lost it would, of course, greatly exceed that $5,000 paid out.

Now, taking the theft and pilferage part of it, the premiums paid were $324.54; the loss that occurred was $330.91. You see, the insurance companies have to exist on what premiums we pay them, and there are so many shortages on the ocean now that where the shortage exceeds the premiums they are not so enthusiastic about this theft and pilferage business. That is the reason I mentioned this pamphlet here.

Are there any questions, Mr. Chairman?

Dr. HUEBNER. Are your losses as big now as they have been, in the way of theft and pilferage?

Mr. HYLANDER. Yes, sir; they have been increasing.

Dr. HUEBNER. They have been increasing; there has been no decrease?

Mr. HYLANDER. No decrease.

Dr. HUEBNER. We were told last night that that problem was solving itself. The representative of the Ward Line made that statement. You do not find that to be the case in your business?

Mr. HYLANDER. Taking our losses as a whole, they are increasing. I might mention this fact: It seems like our foreign lines are more accommodating and take care of these things better than our own Shipping Board. For example, we make enormous shipments to Manila and Japan, using Canadian steamships from Vancouver. If a shortage is located on the dock when delivery is taken they arrange immediate settlement for that shortage; they pay for it right there.

Mr. KIRKPATRICK. Do they pay on the basis of their liability in the bill of lading?

Mr. HYLANDER. They pay according to the invoice value.

Mr. LOINES. I would like to ask the date of those shipments you refer to as being made through J. H. Winchester & Co.

Mr. HYLANDER. The date of the shipments?

Mr. LOINES. Yes; the dates of those two shipments you referred to in your testimony.

Mr. HYLANDER. I would be glad to give them to you. In the case of the shipment on the *Lake Farber* from New York City, it was November 1, 1920, en route to Bristol, England. The goods were destined for London.

The second shipment from New York City was September 11, 1920, on the steamship *Lake Frolona.* It arrived at Bristol October 8, 1920.

Later in the day I will file a written statement with you, Mr. Chairman.

Mr. EDMONDS. I would like to ask you a little further about your across-the-Pacific shipments. You ship over the Canadian Pacific Line?

Mr. HYLANDER. Yes, sir.

Mr. EDMONDS. Is their bill of lading similar to the bill of lading issued by the Pacific Mail?

Mr. HYLANDER. Nearly all the steamship companies' bills of lading are slightly different. I have not just in mind how the liability clause reads.

Mr. EDMONDS. In their principal features they are the same?

Mr. HYLANDER. Yes, sir.

Mr. EDMONDS. Why do they make the exception? Do they discover the shortage when they unload the steamer?

Mr. HYLANDER. That shortage may occur while the goods are in their custody and may be found when they make delivery to the consignee.

Mr. EDMONDS. You mean when they make delivery in Manila?

Mr. HYLANDER. In Manila or to whatever port it is exported.

Mr. EDMONDS. And they make settlement immediately upon notification of that?

Mr. HYLANDER. They make settlement with the consignee at once if he files claim, or if it is returned here to us they make settlement as soon as they get the papers.

Mr. EDMONDS. They do not take advantage of the limitation of liability in their bill of lading at all? They make full settlement?

Mr. HYLANDER. They make full settlement. They are after the business and are very accommodating.

Mr. EDMONDS. Do they do that on the Canadian shipments also?

Mr. HYLANDER. I do not know about the Canadian shipments.

Mr. EDMONDS. But you know they do on American shipments, because they do that with you?

Mr. HYLANDER. Yes, sir.

Mr. EDMONDS. And they do not take advantage of the limitation of liability at all?

Mr. HYLANDER. No, sir.

Mr. EDMONDS. Don't they question the claim in any way in accordance with the bill of lading?

Mr. HYLANDER. If the man at the dock who makes the delivery gets the record of the shortage can see with his own eyes something is gone, they accept that and settle on it without question.

Mr. EDMONDS. How do you ship; over what road?

Mr. HYLANDER. The Soo Line and the Canadian Pacific.

Mr. EDMONDS. You send your shipments over the Canadian Pacific Railroad?

Mr. HYLANDER. Yes, sir.

Mr. EDMONDS. And the steamers are owned by the Canadian Pacific, by which you ship to Manila and China?

Mr. HYLANDER. As far as we know.

Mr. EDMONDS. That, of course, would be a complete rail and water shipment by one corporation all the way through to Manila.

Mr. HYLANDER. It is not one corporation; it is one continuous interest. I understand the Canadian Pacific Railroad is a separate corporation from the boat line.

Mr. EDMONDS. It is one interest, however, which is one and the same thing.

Mr. HYLANDER. The same thing.

Mr. SENECAL. What is the average value of each case of chewing gum?

Mr. HYLANDER. Between our branch houses, it is about $40.

Mr. SENECAL. It is less than $100?

Mr. HYLANDER. Yes, sir. The value between the branch house and the customer is about $55.

(The paper filed by Mr. Hylander for the record is as follows:)

HEARING BEFORE THE MERCHANT MARINE COMMITTEE OF THE HOUSE OF REPRESENTATIVES—STATEMENT OF WILLIAM WRIGLEY, JR., CO.

Our company is interested in the building up of the American export trade, and in response to your invitation herewith submith the following facts as to our experience in the exportation of chewing gum.

For 1919 our total exports of chewing gum amounted to $1,739,124.40, and for 1920, $1,419,334.13. For 1920 the total amount of gum exported by all American manufacturers amounted to $2,612,540.

A foreign trade drawback, according to our experience is that we do not have a bill of lading continuity. Where goods are handled by two or more steamship lines it is extremely difficult to fasten liability for loss or damage upon a particular steamship line. As an illustration of the difficulties attending foreign trade we refer to a shipment of five cases of chewing gum, value $87, United States currency, forwarded from Chicago October 11, 1918, thence from Seattle December 19, 1918, via steamship *Wainwright* to Hongkong, China. This gum was handled by the above steamer to Kobe, Japan, from which port it moved February 11, 1919, in steamship *Hirah-ira*, being overcarried through negligence, apparently, of the Nippon Yusen Kaisha Co. to Bombay, India. The gum was found through tracing in the Bombay Port-Trust Godowns, being forwarded back to Hongkong, at which port it arrived July 15, 1919, in steamship *Kaifuku Maru*. The chewing gum was stained with oil, two cases were broken open, and the remainder had been renailed. In other words, the gum was not in salable condition, being, therefore, rejected by the consignees. Note in particular the time consumed in transit. Claim was filed upon receiving report from consignees in September, 1919, the papers being submitted to the Wells Shipping Co., who in turn submitted them to the Pacific Steamship Co., the latter line handling the claim with the N. Y. K. Co. This claim has not been settled to date and there seems to be slight prospect of attaining settlement. In this instance we can not recover from the Marine Insurance Co., and to our mind it is simply a case of negligence on the part of the steamship carriers. Attached you will find letter dated July 9, 1921, from the Pacific Steamship Co., Seattle, which gives some idea as to excuses offered at the present time by the ocean lines.

Another illustration covering the tactics of the ocean carriers with reference to the shippers' products for foreign lands is in connection with 130 cases chewing gum, value about $5,200; gross weight, 15,498 pounds; cubic space occu-

pied, 445 feet; which cleared from New York City on or about September 11, 1920, via steamship *Lake Frolona*, operated by J. H. Winchester & Co., New York City, the owners being the United States Shipping Board, destination shipment, London, England. This boat arrived at Bristol, England, October 8, 1920. A total of 12 cases and 59 boxes (1,259 boxes) was damaged either by oil, water, or pilferage. The amount damaged by oil and water was 579 boxes, was paid for, remittance being received by the Sea Insurance Co. The loss by pilferage, 680 boxes, was disputed by the steamship representatives in Bristol, England, although our London representative recovered for 280 boxes on the 50 per cent basis. In connection with this pilferage, four empty wooden cases were broken when delivered, and James & Hodder disclaim liability for the contents of these cases, making the claim that they were damaged and contents lost through rough weather and perils of the sea, and, further, that the contents of the cases dissolved in the water is a ridiculous claim, inasmuch as chewing gum to a certain extent is nonsoluble. It is our opinion that the gum was taken from the cases while they were in possession of the steamship company by their servants. The base material, chicle, is not soluble. Furthermore, this shipment was stowed at New York City without sufficient discretion, being placed with oil and lard. The attention of your honorable committee is called to our original private file of facts.

Another example of poor service and the kind of treatment that exasperates the American exporter is our shipment of 115 cases chewing gum to London from New York City on or about November 1, 1920, on board the steamship *Lake Farber*, which was controlled by J. H. Winchester Co., agents, the owners being the United States Shipping Board. Shipment arrived at Bristol November 30, 1920, with one complete case missing, for which James & Hodder, steamship agents at Bristol, England, accepted liability. There was also a shortage of 174 boxes chewing gum, for which claim to the amount of $102.74 was filed with J. H. Winchester Co. The latter parties repudiate liability with the statement that they only act as agents for the United States Shipping Board and that said board, in the settlement of claims, is represented by the American Steamship Owners Mutual Protection and Indemnity Association, and that all claims must be approved for payment by this organization. The bill of lading issued was on the form of J. H. Winchester Co. and was signed by E. W. Hickey, master. The Winchester people took the matter up with the American Steamship Owners' Mutual Protection and Indemnity Association, who contend that they are not responsible, inasmuch as the bill of lading contained a rider clause stipulating that "steamer not responsible for breakage, leakage, or loss of contents."

This shipment had a value of about $4,600, occupied 397 cubic feet of space, and had gross weight of 14,714 pounds. We submit herewith for the perusal of your honorable committee our original file in this particular case.

With regard to import shipments of raw material, we call attention to chicle which moves from Mexico to the United States. The limited liability of the New York & Cuba Mail Steamship Co. (Ward Line) is only $8 per cubic foot. This is the only basis on which they will make settlement for shortage. If they assume full invoice liability we are compelled to pay an additional fee of $1\frac{3}{8}$ per cent of the value of the chicle. Their bill of lading clause stipulating the above-mentioned limited liability, as we understand it, has been in effect for some time. During the war and the postwar period the freight rates were high, so the amount they paid us in settlement of claims did not reach very far. A larger liability should have been assumed by the ocean carrier, according to our opinion.

STEAMSHIP LIABILITY.

Practically every steamship line fixes its own terms of liability. We believe there should be a general fixed liability for merchandise similar to that in effect on domestic business over the railroads. For example, the French line limit their liability to $5 per cubic foot, so we would get about $17.50 for a $55 case of chewing gum. Some consignees claim not only the $55 for a case which is lost, but their selling profit as well on orders undelivered. In the case of India merchants, they are demanding at least $65 for a case as replacement value of the gum, figuring that the gum could not be replaced under two or three months at the earliest and, furthermore, the exchange conditions might very much affect it. We believe that at least the steamship lines which enter American ports should be responsible for the full value of the gum. The carriers should not under any condition be permitted to escape from their liability

when accepting business from United States of America territory on such business as is concluded in United States of America territory.

TRANSSHIPMENT OF MERCHANDISE.

Where goods are transshipped on the ocean, the shipper and consignee should be notified, the name of the new steamer being quoted. In case of transshipment some arrangement should be made for liability of carriers while the goods are on dock or in storage at transshipping point.

NONCOMPETITIVE LINES.

Where they exist in carrying shipments from United States ports to foreign ports, and a monopoly is thereby obtained, some control should be held over the steamer rates, and conditions should in no case be forced upon the consignor which are prohibitive or overburdensome. Rates should be fair comparative rates, as if competition existed.

ISSUANCE OF BILLS OF LADING.

Some arrangements should be made to issue bill of lading with a greater leeway between the date of issuance and the date of sailing, especially where goods are on hand, to enable the shipper to arrange for financial transactions and permit the arrival in consignee's hands of the original documents before the shipment reaches destination.

THROUGH COMBINED BILLS OF LADING.

We believe that for a rail and ocean movement there should be a legal, binding contract of a reasonable nature on the rail and steamship carriers. Space on a steamship is obtained before the shipment is offered the rail carrier at an inland point; then why should it be necessary to change a through bill of lading for an ocean-going bill of lading? The railroad company should act with full power of attorney for the steamship carrier, at least for such steamship line as leaves an American port. This through bill of lading should satisfy the bankers; that is, be sufficient for financial transaction.

BOND FOR NONARRIVAL OF STEAMSHIP DOCUMENTS ON OR BEFORE DATE OF ARRIVAL OF RESPECTIVE STEAMER.

This should be fixed in an equitable manner so that conditions are not burdensome to firms of repute. Very often mails carrying the documents, owing to diversion of route or stress of weather or other causes, do not deliver the steamer documents prior to the arrival of the steamer carrying the goods. The amount of the bond should in no case exceed the value of the goods, especially when it is clear from the manifest that the goods are intended for a certain house and are not to order.

In case of storage, storage terms should be reasonable and a few days' limit should be arranged free of charge, during which time the steam carrier, or its agent, should take care of the storage except where customhouses are to be used, and then storage charges should only be debited at the absolute net cost.

GOODS IN BOND FROM INLAND PORTS.

On a through combined bill of lading a declaration of the customs officer at port of exit by the consignor or advice by the railway company of arrival of goods in bond should be sufficient evidence of the notification of the customs officer of the export of the bonded goods, especially where the invoice specifically declares the identical goods, and the respective manifest showing shipment of the goods conclusive proof. Where goods are sent in bond and sealed, or the car sealed, they have already been inspected by customs authorities as to count or weight.

NONSAILING ON STEAMER ON WHICH SPACE HAS BEEN RESERVED.

In the case of delay of departure, we believe the obligation should remain to the steamship company to inform the consignor or his representative imme-

diately. This is most important where bills of lading have been attached to draft and sent through a bank, and where conditions imposed on consignee are such that he pays draft on presentation. The consignee is divested of his money weeks before he should be and it is not conducive to American trade and good will to have such practices put through. In most instances the consignee is very willing to pay for goods on arrival, but if they do not happen to be on steamer stated on draft or document the bank usually insists on payment, goods or no goods. Such a change of steamer of same line, or particularly a change to steamer of another carrying line, should be an option to the consignor to accept or reject.

BILL OF LADING CLAUSES.

Should be as near alike in various bills of lading as possible. Standard routes should have standard clauses all alike. For example, steamers plying from New York or New Orleans to South America should issue a standard South American bill of lading.

EXPORT INSURANCE.

The insured value of our marine insurance for 1920 was $1,687,879, with premiums paid, $4,848.48, losses incurred and collected being $273.24. The theft and pilferage insurance value was $39,956, with premium paid, $324.54, and losses incurred, $330.91. The combination insured value—that is, general and particular average, combined with theft and pilferage—was $28,116; premium paid, $394.41; losses incurred, $232.94. We do not often take out theft and pilferage insurance. It is expensive, and in one instance, from San Francisco to Manzanillo, Mexico, it is 3½ per cent for a five-day run. The insurance companies are not enthusiastic about taking the risk of theft and pilferage. The losses, according to our experience, from theft and pilferage are increasing in all parts of the world. Something must be done to correct this evil or American foreign trade will most surely suffer a setback. The insurance companies, as we have reason to believe, are concerned, and their rates continue to advance. Their representative is present at the hearing, and we invite your attention to circular notice issued a short time ago by the Insurance Company of North America, Philadelphia.

As an American exporter, respectfully request that your committee give the above facts the most careful consideration.

WM. WRIGLEY, JR., CO.,
C. G. HYLANDER,
Traffic Manager.

STATEMENT OF MR. RALPH MERRIAM, CHICAGO, ILL., REPRESENTING WM. WRIGLEY, JR., CO.

Mr. MERRIAM. Mr. Chairman, I think the committee is probably aware of the fact there has been a hearing in the last few months before the Interstate Commerce Commission on the question of the prescription of a suitable export bill of lading under the terms of the new transportation act. There are some things in contemplation in that proceeding which I think ought to be made matters of legislation, and I wish to speak of them very briefly.

Legislation should be passed, in my opinion, requiring the rail and ocean carriers to dispatch notices as follows:

First. On an export shipment from an inland point in the United States to a foreign port, where the goods are prevented by any cause from going from the port of export on the vessel intended, the rail carrier from the inland point should be required to dispatch notice to the shipper of this fact.

Second. In case of transshipment of the goods on the water, the ocean vessel should be required to dispatch notice thereof to both the shipper and the consignee.

Third. In case the vessel is quarantined and the goods discharged in a depot or lazarette, the said vessel should be required to dispatch notice thereof to the shipper and the consignee.

Fourth. If goods are not taken by the consignee promptly upon discharge of the vessel, and the vessel enters and lands them, or puts them into a craft or ashore, the vessel should be required by statute to dispatch notice thereof to the shipper and consignee.

Fifth. If in the movement from the original port of export to final destination port the goods fail to go in any vessel for which intended and the vessel carrier forwards them by other vessel or vessels, it should be required by statute to dispatch notice thereof to the shipper.

Sixth. In case the regular vessel service to final port of delivery is, for any reason, suspended or interrupted, and the carrier, at the option of the owner or consignee of the goods or the holder of the bill of lading, forwards the goods to the nearest available port as a final delivery, the vessel should be required by statute to dispatch notice thereof to the shipper and consignee.

I want to say one word in that connection, and that is this, that when you are shipping goods to a foreign country you have to know where those goods are and what is happening to them. I think the rail carriers and the ocean carriers should be required to give these notices, otherwise the exporter is utterly at sea and can not advise his customers what is happening to the goods, and it is very difficult to carry on business. These notices may be provided for in the bill of lading prescribed by the Interstate Commerce Commission, but I think they should be provided for definitely by statute, so as to be put into permanent form. Notwithstanding the interstate commerce act, as amended by the transportation act of 1920, authorizes the Interstate Commerce Commission to make such rules and regulations, not inconsistent with said section, as will prescribe the form of a through bill of lading on export shipments from inland points of the United States to foreign ports, this authority of the commission should, in my opinion, be enlarged. The commission should be empowered to prescribe the form and substantially all the terms and conditions of the said bill of lading except the rates charged. I do not mean by that to question the present power of the commission in the proceeding in which it is now engaged; I think it has the power to carry out the scope of that proceeding, but I think its power ought to be strengthened somewhat in the matter just suggested.

The original common law and maritime law liability of ocean and other water carriers as insurers of safe transportation and delivery of freight should in my view be restored by statute. Such carriers should be forbidden by statute to avoid or limit this liability by contract. They should be forbidden by statute to exempt themselves from liability for loss, damage, or injury arising from specific causes; they should be forbidden by statute to limit their liability to specified sums or to agreed valuations. Such exemptions as the common law or maritime law, independent of stipulations in the shipping contract and independent of statutes, has given them they should retain—for example, the exemptions from acts of God, the public enemy, or any other of the well-recognized exemptions prescribed by law. Otherwise they should be made insurers of the safe delivery and transportation of the freight committed to them.

To accomplish this purpose I think that certain sections of the Harter Act should be repealed. I will not go into the details of that statute; it is familiar to all of us. I suggest that section 1 should be repealed.

Mr. LEHLBACH. Do you suggest anything in its place?

Mr. MERRIAM. I am going to make a suggestion. I think that section 2 should be repealed; also section 3. [Laughter.]

With respect to sections 4281 to 4289 of the Revised Statutes, I would have the following suggestions to make: I think that section 4281 should be allowed to stand: section 4282 should be repealed; section 4283, limiting the liability of the owner not to exceed his interest, should be allowed to stand; section 4284 should be allowed to stand: also section 4285: and also sections 4286, 4287, 4288, and 4289.

Now, I am not unaware, Mr. Chairman, that this involves some radical changes. If my suggestion has been received with some gasping breath, as I think I have heard around the table here, it does not come to me as a matter of surprise. I may say this, that in my practice of the law I have specialized to some extent in interstate commerce matters, having a great deal to do with loss and damage to freight by carriers by rail. A year or two ago I would not have taken this position, but this situation on the ocean has gotten so loose, the irresponsibility of the ocean employees is so great, the tendency to theft is so great, the passing of the buck from one line to another is so extensive that I believe it is for the best interests of everybody—the steamship owners, the shippers, and everybody else—to restore the old common law and maritime law liability of the ocean vessel. I believe it is the only way out.

I want to give some reasons for that. The shipper is going to pay the bill, however it is handled. He is paying it to-day and he is paying it extravagantly; that is, he is paying an insurance company to insure him, he is paying the boat line for certain kinds of protection against loss, and the thing is all broken up, it is distributed. I want to point out one pertinent fact, it seems to me, where an outside insurance company insures, which I think should be taken into consideration, in the case of insurance against the acts of the owner of a steamboat and his employees, over whom the insurance company has no control. It certainly has to charge a higher premium than if the boat owner himself did that insuring, because the boat owner has his own employees under discipline. If you sent more of those employees to the penitentiary, if the boat owners were active in prosecuting these men for theft, if they had the commercial interest and financial interest to spur them on to that proposition, we would have less of this thieving. We would have a responsible company handling these goods and not a responsibility divided among several interests, and particularly in the case of the railroad, where the shipper has no control, if you center the responsibility in these boat lines, which is the cheaper way to do it, and then the boat lines have to pay the bill. If these boat lines have to raise their rates, let them raise them; but the total will be less than the shipper is paying to-day.

Furthermore, the boat owners to-day are relieved from liability in an unscientific way. They cut down their total losses, their total risks and payments, by the denial of justice to the individual on his

particular claim. I am not criticizing the boat owners; I am trying to appeal to the intelligence of those who are here. I am not criticizing them, I am not saying they are wrongfully evasive; I am simply saying this: That the responsibility ought to be centered in them for the safe transportation of these goods and then they ought to be paid for it in the rates. And they will be paid for it in the rates; I am aware of that fact, of course. I am also aware of the fact that there are foreign boats, boats of foreign nations, which do not serve our ports, and there is possibly certain competition between the boats of one country serving other ports and the boats serving our ports. But under the commerce clause of the Constitution and under the maritime clause, I am fully convinced that Congress has the power to determine the extent and degree of responsibility, under the maritime law, of any boat, whether it has foreign registry or American registry, which serves our ports.

It seems to me that we have got to depart from this basis of divided responsibility in the boat owners and we will have to pay them to carry it—the shippers will have to pay them to carry it—but I think it will cost less to do so. That risk is already being carried now, gentlemen; the shipper carries a part of it, the insurance company carries a part of it, and the boat owner carries a part of it. Why not let the shippers create an insurance fund and give it to the boat owners in the shape of increased rates, if necessary, and let them handle the whole thing—center the responsibility, center the supervision and control of the goods, center the discipline of the employees on the ships, and secure the carrying of this risk at the lowest economic figure.

While that appears to be a rather fundamental change it does seem to me it is based somewhat on a sound view of the situation.

Mr. CAMPBELL. May I ask a question at this point?

Mr. LEHLBACH. If Mr. Merriam will yield.

Mr. MERRIAM. I will do so, but I do not want to take too much time.

Mr. CAMPBELL. Does your idea contemplate the equivalent of an insured bill of lading?

Mr. MERRIAM. Yes; it contemplates the original common law and maritime liability, unrestricted by contract or statute.

Mr. CAMPBELL. And you expect to do away with cargo insurance by cargo insurance companies?

Mr. MERRIAM. Well, I do not know. I do not think I could discuss that intelligently—the whole effect that this would have on insurance. I think, possibly, I am trying to drive the insurance company out of business; but I do not care, if somebody else can perform the function more economically. If you are going to ask me to discuss charter parties and all that sort of thing——

Mr. CAMPBELL. I am not going to ask about that at all. You do not want to pay two insurances, do you?

Mr. MERRIAM. No.

Mr. CAMPBELL. One to the shipowner, as you contemplate, and one to the cargo underwriter, for the same risks?

Mr. MERRIAM. Not for the same risks; no.

Mr. CAMPBELL. Yet you want to make the shipowner assume all of the risks incident to the common-law carrier?

Mr. MERRIAM. I want him to assume those risks that the common law prescribed before they had restrictions of liability in bills of

lading or by statute. I do not think I can tell you what field that is going to leave for the insurance company; you gentlemen know that a good deal better than I do; but I think there are other risks for the insurance company.

Mr. EDMONDS. The acts of God, public enemy, and so on, would still have to be insured.

Mr. MERRIAM. Yes.

Mr. EDMONDS. Because that liability is not even assumed by the ship under the common law; it is not assumed by anybody.

Mr. MERRIAM. That is correct.

Mr. EDMONDS Therefore the insurance company would still have a function in regard to hull and cargo insurance?

Mr. MERRIAM. Yes, sir.

Mr. EDMONDS. Not that I am talking for any insurance company at all; but I just want to see, if we pass this bill, whether there would be any assumption in the part of the shipowner of the entire insurance against acts of God and all that kind of thing.

Mr. MERRIAM. There would not be, as I understand the law. There are certain exceptions well established and fixed by the common law itself; and if the shipper did not want to carry those, then he would have to insure against them.

Mr. EDMONDS. The common law would still except acts of God and the public enemy, would it?

Mr. MERRIAM. Yes, sir.

Mr. LEHLBACH. As a matter of fact, the common law imposes liability on the carrier only for the results of his negligence as a bailee?

Mr. MERRIAM. I do not agree with you on that.

Mr. LEHLBACH. How much further does it go?

Mr. MERRIAM. It makes him an insurer and makes him absolutely liable for the safe delivery of the goods, irrespective of his negligence and although he may be exercising reasonable care, except in those instances which the law defines, namely, act of God, public enemy, and there may be some others.

Mr. EDMONDS. If you wipe out the Harter Act would that be taken out?

Mr. MERRIAM. You would have to have some statute which would prevent the carriers from limiting that liability in the shipping contract; you would have to have an affirmative statute to that effect.

Mr. EDMONDS. In other words, you would have to have a statute that would still exempt acts of God.

Mr. MERRIAM. I can explain that very simply: We have done that in the case of the rail carriers; the Cummins amendment does that very thing. The carriers to-day can not stipulate in their shipping contracts for exceptions either as to the causes of liability, as fire, for instance, nor as to the amount of their liability in dollars and cents; nor as to an agreed valuation; except, in respect to agreed valuations, they may do so with the consent of the Interstate Commerce Commission where the rates are based on valuations, with the consent and upon a direct order of the commission. I think we ought to have the same thing for the ocean carriers, with this possible exception: That I do not say that the common law of the ocean carriers, the maritime law, is exactly the same as the common law of the land carriers.

Mr. EDMONDS. Let us take a concrete case of a shipment to Peru, we will say, from Chicago. The goods are shipped by rail from Chicago and placed on a steamer. The steamer takes them to Peru and delivers them to the customhouse or delivers them on a lighter. The minute that cargo gets on the lighter, unless the steamship company should own that lighter—which would be impossible for all the ports along the coast of South America there for a steamship company to carry on those lighter operations with only one steamer going there a month—that cargo would be out of the hands of the steamship company. Then it would go ashore and might have to go two or three hundred miles inland on the railroad and have to pass through the customhouse.

Mr. MERRIAM. Yes, sir.

Mr. EDMONDS. Now, if you are going to make the steamship owner liable until he delivers to the consignee, it would be impossible for them to accept the risk without a tremendously heavy cost.

Mr. MERRIAM. I said to the port of destination.

Mr. EDMONDS. But "to the port" has a different meaning in a great many places. It may not be possible for the steamship to deliver at the port; it may have to lie out in the ocean or out in the stream.

Mr. MERRIAM. Yes, sir.

Mr. EDMONDS. And the cargo may have to be lightered, and when they deliver at the end of ship's tackle, under the bill of lading at the present time, they consider their liability has terminated, as far as the boat is concerned, and I believe rightly so.

Mr. MERRIAM. What I would mean by this provision is that where the steamship company, at or near the port, makes its customary delivery, that is where its liability would terminate.

Mr. EDMONDS. Who would take the liability up after that?

Mr. MERRIAM. If it was an inland shipment, I do not know that my plan would cover it; I do not know whether we can cover the liability of the railroad in another country and over which we have not jurisdiction.

Mr. EDMONDS. Suppose it would be delivered, then, just at the port, but would still have to be dumped into a lighter and go through a customs house. The officials of the customs house might be dishonest.

Mr. MERRIAM. Yes, sir.

Mr. EDMONDS. The men on the lighter might be dishonest.

Mr. MERRIAM. Yes, sir.

Mr. EDMONDS. Then how can you deliver at the port, even? You can not deliver through the customs house at these places to the consignee.

Mr. MERRIAM. Delivery to the port I would understand would be delivery to the lighter; in other words, delivery at the port in the customary way in which delivery is made at that point.

Mr. EDMONDS. Then you would consider under that that all liability, outside of this insurance question, might have to fall on the owner of the goods?

Mr. MERRIAM. That might be so.

Mr. EDMONDS. If he is going to deliver them c. i. f.

Mr. MERRIAM. That might be so. I will say this, if I understand you correctly, that where the steamer is liable for delivery to the port of destination, its liability should terminate when it has de-

livered in the customary way in which delivery is made at that point. Then when it has made delivery in the customary way at port of destination, it seems to me its liability is terminated.

Commissioner LISSNER. Under your plan, would it not become necessary for a vessel owner to insure his liability?

Mr. MERRIAM. I do not know.

Commissioner LISSNER. You think he could afford to carry that liability without insurance, do you?

Mr. MERRIAM. Yes, sir; if it is paid for in the rate, I think he could. It would depend on his rate. If the vessel owners generally insured that liability, they would have to have sufficient rates to pay the insurance premium; and if they paid it themselves, they would have to have a fund created to pay it. The vessel owners have not any money ordinarily except what the shippers pay them. My point is this, that it is more necessary to center that responsibility of the vessel in the vessel owner and to pay him for it and put the whole responsibility on him, than it is to divide it between the shipper, the insurance company and the vessel owner as at present.

Now, I want to make a general statement and that concludes my views. There never was anything advocated that somebody did not start it, Mr. Chairman; there never was any idea advocated that was not ridiculed when it was started. When they talked about making our friend, the first carrier on rail shipments in this country, liable for the losses of the connecting carriers our railroad friends held up their hands in holy horror. They said, "It is unconstitutional; it is a violation of the right of contract; it is a committal of every unconstitutional crime ever committed in this country;" and when that statute was passed the railroads fought it bitterly. It went to the Supreme Court of the United States in half a dozen cases, involving different phases of it, and the Supreme Court sustained that statute, and it is one of the finest pieces of legislation ever passed in this country. To-day you can get your claim paid by the railroad. The situation has immensely improved. If you file your claim with the terminal carrier he would handle it for the first carrier and handle it for all the intervening lines, because they know he can handle it just as well and carefully as they could do for themselves; or, if it is convenient, you can file it with the first carrier. You have a centralized control.

Mr. EDMONDS. It is fairly well reflected, too, in the railroad rates, is it not?

Mr. MERRIAM. Then let it be reflected. The shippers had better pay for it as a whole than, for particular shipments, to pay the whole thing in a denial of settlement of their loss and damage claims. Somebody has got to pay it. I represent only certain shippers here, but I can say, as far as I am concerned, I think the shippers would cheerfully pay whatever rates are involved rather than to pay it through the denial of their loss and damage claims. And when loss and damage claims do occur they ought to be paid in full, and if there is any diminution in them it ought to be due to constructive work in protecting their risks, it seems to me. We ought to get something like the concentrated responsibility they have when they ship in foreign countries. Of course, these gentlemen will all say it is impossible; but take the German Government, our late enemy: An obscure German manufacturer away back in the forest could open up

a little factory to manufacture stuff and handle it over the railroad and go to the bank and get his money and forget all about it. The German Government in cooperation with the steamship line would deliver that stuff in Timbuctoo safely, and if they did not deliver safely they would see that he got his money. That is the reason they were making progress in gaining the trade of the world, and that is the reason they are gaining it to-day. That is the way they work it.

You can ridicule that, but we ought to have a concentrated responsibility. If you deliver an ocean shipment to an inland carrier in the United States, that inland carrier ought to be responsible all the way through to destination. He ought to work out his interrail and ocean connections and if stuff is lost he ought to handle that the way the railroad carriers do. That is the efficient way to do it.

These ocean carriers are destroying their own traffic; they are putting obstacles in the way of getting business. If you want to give up responsible handling and pay our claims and quit passing the buck we will pay you for the service, gentlemen, and we will give you more business. I believe it is in the interest of the steamship owner. Of course, I am a mere layman; I am not a steamship operator. I am worse than that; I am a lawyer. But why should you gentlemen seek to avoid responsibility; why don't you seek it? Why do you try to avoid service; why don't you seek it and center it in yourselves? I think we ought to have that unified responsibility from the inland point to destination. If the shipment originates at the ocean port I realize there may be complications of international law and some obstacles.

Mr. HARDY. What you mean is, you want a definite understanding when you ship your goods as to where the obligation to you rests?

Mr. MERRIAM. That is the idea. I realize, of course, there may be some steamboats in the line of the haul who never come into this country and are not subject even to the process of our courts. We may be subject to that limitation, but we ought to get it by treaty if we can not get it in any other way. But, in so far as the steamboat companies come into our ports and are subject to the operation of our maritime law, they ought to be held to full responsibility for losses in these cases—and some particular company. The one who receives the shipment is the one, it seems to me, that ought to handle the claims and be held responsible for the whole transit over every line that is subject to the processes of our courts.

Mr. HARDY. Are we not having the same difficulty to overcome in making the local shippers stand sponsor to the end of the shipment?

Mr. MERRIAM. You mean our local steamboat lines?

Mr. HARDY. I understood you to say a man could go anywhere to the railroad in Germany and get a through bill of lading with the knowledge that the railroad would settle with him for the losses?

Mr. MERRIAM. My understanding of that is I think it was really a governmental supervision and cooperation that made possible what I spoke of.

Mr. HARDY. However it was done, that was the end obtained?

Mr. MERRIAM. Yes; and I believe it was pretty successfully obtained. That has been investigated by clients whom I represent, who have reported that to me as a fact, and I am inclined to think

that is true. They traveled in Germany before the war and made an investigation of that. I believe, however, it was in large part due to very close governmental supervision of things. I think governmental efficiency did it, and why could we not get governmental efficiency here.

Mr. HARDY. We have an idea in this country that governmental efficiency is inefficiency, that there is no such thing as efficient Government operation.

Mr. MERRIAM. I do not feel that way about it. I think if Congress set itself to solve this problem of getting unified and responsible transportation and delivery of the goods from an inland point in the United States or a United States port to the ultimate foreign destination that it could achieve that purpose.

Mr. CAMPBELL. I am going to take a simple example. Under your plan you would repeal the third section of the Harter Act, which exempts the shipowner from liability for negligence in navigation, providing he exercised due diligence in making the steamer seaworthy?

Mr. MERRIAM. Yes, sir.

Mr. CAMPBELL. In other words, you would impose upon the ship owner liability for a loss resulting from a negligent collision. That is what that paragraph protects him against. To that extent, for example, you would make the shipowner an insurer?

Mr. MERRIAM. Yes, sir.

Mr. CAMPBELL. And you are willing to pay him for that insurance through an increased rate. He in turn would insure with the P. & I. club and let the P. & I. club put that insurance in. Now you, as a shipper, would not want to insure with an insurance company against the same risk, because if you did you would be paying two insurance premiums for the same loss. Now, then, export business is done to-day very largely through the banks. The documents that you require to finance your export shipments are, first, an invoice; second, a bill of lading; and, third, an insurance policy. Do you think that under your plan you would be able to induce your banks to finance your exports by substituting a bill of lading for the insurance policy which to-day covers against negligence in navigation? Do you think it is a practical business matter?

Mr. MERRIAM. Yes, sir.

Mr. CAMPBELL. You think you could induce your banks to forego the insurance policy which they require to-day and to accept in substitution therefor a bill of lading covering that risk?

Mr. MERRIAM. Yes, sir. If you will give me the legislation which I have requested, I do think so.

Mr. CAMPBELL. Have you made any inquiry of the banks to determine that at all?

Mr. MERRIAM. No, sir.

Mr. RUSH. Mr. Chairman and gentlemen, the statement made by the attorney for the steamship owners carries with it a fallacy. There will be no necessity for having two insurance premiums to pay on the same risk. The insurance company will issue a policy covering all the risks, which would include the case of a negligent collision such as Mr. Campbell suggests, and they would pay their policyholder for that loss and then, by subrogation to that policyholder, would come back on the steamship owner. That was the

situation precisely that existed prior to these recent court decisions; it is one which would be restored. It is existing now under limitations. And there would be no trouble about the shipper getting all the accommodation he wanted from the banks on such an insurance policy. It would not be necessary to do away with the insurance policy, because the rate charged for that insurance would be either nominal or none at all, because we would have the shipowner to go back on.

Mr. CAMPBELL. He says it is my fallacy. He says the insurance company would insure the risk and would not charge a premium for it. Did anybody ever hear of an insurance company doing that—insuring a risk and not charging a premium for it? His overhead in writing insurance is involved and if he did not charge for that risk it would be a loss to him at least to that extent.

Mr. MERRIAM. You do assume the shipowners would have to have an insurance company to carry the risk. That is an assumption. I do not know whether it is correct or not.

In taking leave of the committee, I want to say this. It may seem a bit incredible, but I am really very conservative. I represent conservative interests. I represent interests who maintain friendly relations with carriers and practically never sue them. I have never before, in representing my clients in any proceeding, asked for such fundamental changes as I have asked here to-day. At the export bill-of-lading hearing before the Interstate Commerce Commission, I was very much more conservative than the most conservative representative of the shipping interests. I accused the attorney for the National Industrial Traffic League of being a radical in that proceeding. The only reason I speak of these fundamental changes is because I have gone through a change of view on it myself in the actual contact with these things. I do not think your present system is going to work in building up our shipping; I think it has got to be changed and you have got to centralize this responsibility. I wish the suggestions could be considered and not thrown out as extreme. Possibly our minds are going to come to it; but I believe ultimately we have to provide a responsibility for the handling on the ocean of our foreign exports that you have not got to-day and that I do not think you will get under this system.

Mr. EDMONDS. Without it was decided to have a through bill of lading, it would not be possible with any degree of satisfaction to the shipper, do you think?

Mr. MERRIAM. If you adopted these changes?

Mr. EDMONDS. If you had a change that would require them to accept equally the liability all along the line, the interchange of freight between the steamer and the railroad could be carried out on the through bill of lading, is not that so—just the same as you carry a shipment to-day on a dozen different railroads and divide up the liability between them?

Mr. MERRIAM. That would be a matter of interline settlement.

Mr. EDMONDS. Unless this liability can be covered in some way or other, a through bill of lading would be almost impossible. You can say they shall take it on our railroads and put it on such and such a ship, but at ship's tackle your liability stops.

Mr. MERRIAM. Yes; in any event. If I understand your point, I think I agree with you fully.

Mr. AMBERG. You will recall Mr. Englar referred to 12 letters that came in one day to our office disclaiming liability on the ground that notice of claim had not been given in time. I have here letters from the Steamship Owners' Protection and Indemnity Association, all on behalf of the same steamship company, on shipments from New York in midsummer last year disclaiming liability on the ground that the time for giving notice of the claim had not been complied with. The amounts of the claims as mentioned in these letters are $2,227, $1,125, $1,712, $352, $89, $408, $356, $58, $51.27, $63, $1,865, $105, $2,700, $72, $1,467, $383, $252, $45, $1,507, and I might say that here is one of the claims of the Cleveland Worsted Mills, represented by the gentleman who testified yesterday. Here is a claim for $1,507, notice of claim not in time, and another one for $660. The amount does not appear in the last one. There are 21 of them that came in the mail from June 7 to June 10.

Mr. LOINES. Did those claims come to you through the underwriters?

Mr. AMBERG. They probably did.

Mr. LOINES. And they are matters on which premiums had been paid by various shippers?

Mr. AMBERG. Probably so; yes.

Mr. LEHLBACH. The committee will now hear from the representatives of the shipowners, and will request Mr. Campbell to designate who is to be heard and the order.

Mr. CAMPBELL. I would like to ask Mr. Imlay two questions overnight. I want to ask how long the Ward Line has been in business?

Mr. IMLAY. I am unable to answer that definitely, but I would say a great many years.

Mr. CAMPBELL. You testified last night at considerable length about a system of watching and caretaking of the cargo, and I understand the impression was that that was an innovation—something new. Now, I ask you how long that system to which you testified has been in vogue and in use by the Ward Line in its business?

Mr. IMLAY. I have been with the Ward Line going on 15 years, and that system was in use when I joined the company.

Mr. CAMPBELL. That is all. Now, I am going to ask the committee to hear Mr. Hanlin, who is manager of the terminals, as I understand it, for the United American Lines engaged in European service. We heard last night from a man who was engaged in the West Indies service.

STATEMENT OF MR. H. R. HANLIN, NEW YORK, N. Y., REPRESENTING UNITED AMERICAN LINES, EUROPEAN SERVICE.

Mr. HANLIN. Mr. Chairman, I wish to explain to you and the gentlemen of the committee the system we have in effect, so far as the United American Lines is concerned, in the protection of cargo on the docks at New York.

We have an organized police force, which is a company police force organized along the lines of a city police force. We have in charge of it a superintendent of police, who has lieutenants and roundsmen who are in charge of each tour of eight hours to a tour. Those roundsmen have charge of the patrolmen and the watchmen who take care of the cargo on the pier.

The chief of the department and also his subordinate officials are experienced police officers. A number of them are pensioned city policemen who are familiar with the New York water front and also have a knowledge of the ways of the crooks and know a large number of them; that is, they have been associated with river robberies and water-front robberies in the city in the past.

The patrolmen and watchmen, when they are employed, fill out applications giving their past record and their experience. Then we write to previous employers to give the steamship company their record and when last employed. These requests for their records are sent to different former employers. In addition to the written returns from former employers we have the applicants personally investigated by a representative of the company, as to their honesty, habits, etc. Quite a considerable number of these men, particularly the roundsmen, lieutenants, and patrolmen, are regularly appointed special city policemen.

In addition to that we have men working on the docks who are not known to anyone excepting the superintendent of police, or, perhaps, to his lieutenants, checking up the operations of the different water-front employees who work on the docks. That includes the stevedores, the tally men, truck drivers, public loaders, and other employees about the docks, so that they can keep track of anyone who acts in a suspicious manner or who they find dickering with cargo, and who they report to the superintendent or his officers so that they can be taken from the docks and removed.

In addition to this, city detectives frequently visit the docks and look over the employees with a view to seeing whether there are any questionable characters there, and if there are they notify us so that we can look out for them and watch them. We also have our own men furnished with a description of known water-front thieves and have them periodically look over the pictures in the rogues' gallery for the known bad actors, as we call them. We also have our police department keep in close touch with the railroad police department superintendents and with the different branches of the city department, and also confer from time to time with the different city police departments as to any known conditions around the water fronts, in order to try to keep in touch with them to find out where they are and what they are doing.

In case of the discovery of theft the guilty parties are arrested and prosecuted. We do not pass over any theft on account of influence being brought to bear or for any reason whatever; in other words, if a man is caught stealing he is arrested and prosecuted.

Mr. CAMPBELL. What success do you have in that connection?

Mr. HANLIN. We have had very good success. In every arrest made we have gotten a conviction and, out of all the arrests and convictions we have had, to my knowledge, four suspended sentences. In the other cases they have either been fined or sent to the workhouse.

Mr. CAMPBELL. In what class of your labor have you found most of the thefts to have been committed?

Mr. HANLIN. I do not think by any one particular class. Taking it by the number of men employed, stevedores, truck drivers, truckmen on the docks, that is, outside truckmen over whom we have no control—taking them all in, I would say, according to the number of men employed of each class on the docks it will run pretty close

to even. It seems to have been a practice in the last few years to accuse the stevedores of everything that was stolen; but we do not find that to be the case. We find it is pretty evenly divided. Of course, among the stevedores there are pretty bad actors that will work in from time to time, just the same as in any other class of men. When we find them, they are sent off of the docks and we get rid of them. Taken as a whole, I think the arrests will even up pretty well among all classes, including the railroad lighter captains, the different class of railroad employees that come to the docks, truck drivers, truckmen, and general stevedore labor, and so on. I do not think you can accuse any one particular class of being any worse than the other in cases of stealing.

The small pilferage we watch very closely, and if any suspicion attaches to a party which appears to be well founded, and even in cases where we can not get sufficient on them to make arrests, we ask the party in charge of the particular department to keep them off the docks so that we won't have to take any chances on them.

So far as arrests are concerned, during the year 1920 we made approximately 45 to 50 arrests, in all of which we secured convictions. During the year 1921 to date, we have made, to the best of my recollection, two arrests, indicating that the conditions are much better now and that there is a much better class of men working around the docks and around the water front than there were a year ago.

Mr. CAMPBELL. Have you the opportunity to make a better selection of your men to-day than you had before?

Mr. HANLIN. Yes; I think we can make a very much better selection. I think the same applies to the railroads and others, on account of the dropping off in business and picking up new labor from many different sources, and by employing men who have been trained. The railroad companies have better men; the old men who went to war were taken back into the service, men who were trained and tried in a particular service. We have found that true, particularly in the railroad companies, and now their men are mostly what are called "old-timers." The same thing is true around the water front; we got rid of a lot of fellows who only cared to work when wages were high and they could make big money and picked up as side money what they could get otherwise.

Mr. EDMONDS. Have the arrests become any less this year?

Mr. HANLIN. Yes, sir. Last year we had between 45 and 50; and, to the best of my recollection, to date this year we have had only 2.

Mr. HARDY. Does this pilfering apply to the foreign vessels entering and departing from our ports as much as it does in the case of our domestic vessels?

Mr. HANLIN. I could not answer that personally, but from the information I have received I think it does. That is the impression I have from general conversation.

Mr. HARDY. Do the foreign vessels limit their liability the same as the American vessels do?

Mr. HANLIN. I am not qualified to answer on that: I do not handle that end of the business. I handle the physical operation of the piers and the loading and discharging.

Mr. EDMONDS. I think, Mr. Hardy, from what was testified here yesterday, that the bills of lading of the foreign lines plying out of New York, probably under a conference agreement, carry the

same liability limitations as the American bills of lading. We have not copies of all of them, but we have a lot of the bills of lading here and they look that way.

Mr. HARDY. The reason I ask is simply this: If we are going to build up a merchant marine we must give the American shipper just as much facilities in the American ship as he can get by the foreign ship. If you do not he will ship by the foreign ship.

Mr. EDMONDS. There is probably a conference agreement on the limitation of liability.

Mr. HICKOX. No, sir; you are in error about that. It has been so longer than I have any recollection.

Mr. EDMONDS. Did not your railroad friend make the bill of lading that I asked about yesterday?

Mr. HICKOX. No; it was used before his day.

Mr. CAMPBELL. Proceed with your statement, Mr. Hanlin.

Mr. HANLIN. As a matter of information for the committee, our police pay roll of this particular company that I represent from August 1, last year, to July 1, of this year, for 11 months, which takes in the consolidated companies, has amounted to $184,000, which we have paid for the protection of cargo. That is the pay roll alone. Outside of that there were, of course, some incidental expenses that went for prosecutions and other miscellaneous matters.

Mr. LOINES. That is for watchmen largely, is it not?

Mr. HANLIN. Yes, sir; watchmen. We call them policemen; they are watchmen and policemen.

As to the handling of cargo——

Mr. KIRKPATRICK. Before you get to that—how are these guards armed?

Mr. HANLIN. A portion of them are armed with guns; that is, we have a certain number on each tour on each pier that are equipped with guns and night sticks. Others are not armed, except with the stick. In other words, we do not feel it is necessary to arm all of them, but we keep a few on each tour of duty armed and all the head men, the roundsmen, and lieutenants—the armed men—have city police authority.

Mr. KIRKPATRICK. Are they there night and day?

Mr. HANLIN. They are there 24 hours a day.

Mr. KIRKPATRICK. How are they divided into watches?

Mr. HANLIN. They are divided into three watches of eight hours each, and the docks are stationed off. In other words, take a pier 1,000 feet long, we establish so many posts on the pier, and men are assigned to those posts. During the working hours, say, from 7 to 5, we will have a greater number of men on duty than we have after 5 o'clock in the afternoon, on account of the larger number of people passing to and from the docks, when there are the truckmen that have to be taken care of. Then, when the docks close at night, the doors are closed and then we have a less number of men, because they are not interfered with and can keep a better watch of the cargo. At night the doors are all closed and locked, except the fire doors, and the fire doors are guarded. The other doors are locked from the inside and can not be opened from the outside, and the fire doors are guarded, so that anybody passing in and out can be watched.

In addition to that, any person leaving the pier, either day or night, including the workmen coming off the pier after they are

through work, are looked over by policemen stationed at the gates to see that they are not carrying anything out that does not belong to them. Policemen are stationed on each side of the door as the men go out, an officer or two officers on each side of the door, and they look the men over as they file out to see that they are not carrying any packages. The customhouse guards, as a rule, line up with our police officers and help to make the inspection.

In receiving cargo, I will treat first of the special cargo, which is cargo more liable to pilferage than ordinary general cargo.

Mr. EDMONDS. By "cargo coming in" you mean that is the cargo you are receiving from foreign ports?

Mr. HANLIN. No, sir: by receiving cargo I mean cargo for outward shipment. We call "outward" receiving and "inward" delivery. In receiving cargo, anything of a special nature, that is more liable to pilferage, such as valuable cargo, is checked from the trucks by a checking clerk or tallyman and turned over to an officer, who is called a special cargo man. The piers are equipped with lockers and the special valuable cargo is put in these lockers along the pier by the officer who signs for it.

Mr. CAMPBELL. What do you include in special cargo—hosiery?

Mr. HANLIN. Say, for instance, silk hosiery, lace, furs, silverware, lead pencils——

Mr. KIRKPATRICK. Shoes?

Mr. HANLIN. Shoes—anything that is particularly susceptible to pilferage. That is placed under guard in these special lockers and the man in charge of it is held responsible for it. He is responsible for it until he delivers it to the ship or to the receiving clerk for the ship and takes his receipt for it. In case we have a valuable cargo, such as pig tin or pig lead, which we can not get in the special-cargo locker on account of it being so bulky and weighty that the piers would not stand it, that is checked by the police officer, who signs a receipt for the number of pieces. When that is taken out of his care he is given a receipt for the number of pieces taken out each time any of it is taken out, and when he is relieved by the next man they sign to each other for it all the way through until the cargo is finally dispatched. That cargo, after being taken from the special cargo locker, is transferred to the ship and is checked to the chief officer of the ship, who signs a receipt to the dock department for the special cargo. In delivering it on the other side he takes a receipt from the dock department or whoever takes responsibility for it on the other side.

Mr. KIRKPATRICK. Is that special cargo stowed in a particular section of the ship?

Mr. HANLIN. Special cargo, valuable cargo, is stowed, as far as possible, in special lockers on the ship. At times, however, we have more of what we call special cargo than can be stowed in the lockers. In that case we figure on placing it somewhere in some particular place in the ship under the charge of the chief officer, who designates the place, and other cargo that is not so susceptible to pilferage is piled around it so that it is covered over with other cargo in order to prevent any person from getting in there and opening the boxes and getting away with it. In other words, if we get more than we can get in the lockers it is protected by being piled around with other ordinary general cargo.

The precautions which I have enumerated apply to the handling of special cargo both inward and outward.

In the case of the other general cargo, which is not considered as particularly valuable, in the case of the receiving cargo, it is placed on the docks in charge of watchmen—that is, one watchman may have a certain section of that; he may have a hundred different packages representing 100 small shipments. We do not take a receipt from him for that, because there is so much of it, but it is placed there in his care, and he keeps patrolling backward and forward, watching it during the time it is on the dock, so that it is not given the same protection as to the inclusion of a receipt as special valuable cargo.

On the inland cargo, coming from the other side, the same procedure is followed out. The chief officer signs for it at the other side, and on arrival at New York he turns it over to the dock department, who give him a receipt for it. It is checked out of the ship and the dock department receipts for it, they in turn placing it in a special-cargo locker and placing an officer in charge of it, who has charge of that particular locker. It remains in his charge until the delivery is made to the consignee, when he is relieved of his responsibility, of course, by the receipt of the delivery clerk, who in turn takes a receipt from the consignee's driver or whoever takes delivery.

The inland cargo from the ships, the general cargo, is handled the same as the outward general cargo; a watchman is placed in charge of it from the time it comes on to the dock until it leaves the dock. The cargo being delivered to the consignee's trucks is checked on to the trucks by a tally clerk and a receipt is taken for it.

Mr. KIRKPATRICK. From whom?

Mr. HANLIN. From the driver or whoever is authorized to sign for the consignee. That truck is again stopped at the gate to the pier, where it leaves the pier, and is rechecked by a representative of the police department against the number of packages the truck is supposed to have on. In other words, the tally clerk or dock man gives the policeman at the gate a sheet showing the number of packages this truck is supposed to have on it, and that is checked at the gate by a representative of the police department to see that the truckman has not picked up an extra package on the way up the dock.

Mr. EDMONDS. Who checks the condition of them?

Mr. HANLIN. That is done by the tally clerk.

Mr. EDMONDS. Does he note that on his check?

Mr. HANLIN. Yes, sir. And the police representative also notes the condition of the packages and makes a report to his superintendent, a copy of which goes to the claim department, showing the condition of the packages delivered in case anything goes wrong.

Mr. EDMONDS. Let me ask you: Do you deliver to the consignee, or is that done by his own teamster?

Mr. HANLIN. We do not make delivery to the consignee. That is handled by his own teamster or some contract truckman.

Mr. EDMONDS. You do not have any arrangement with a subsidiary company for that?

Mr. HANLIN. No, sir; we are through with the cargo when it is loaded on the truck at the dock. In other words, we are through

with it when the truck comes, because the consignee has his own drivers or outside truckers load it on the truck for him, and we take a receipt for it when it is loaded on the truck.

Mr. CAMPBELL. If you have noted any damage to the packages, is that fact noted on the receipt which you take from the truckman?

Mr. HANLIN. If there are any defects noted in the packages, the truckman may make a notation on his receipt to show it.

Mr. CAMPBELL. Does he receive a copy of that receipt for delivery to his employer?

Mr. HANLIN. Yes. He would receive a copy, so that he would know what the notations were.

Mr. EDMONDS. Suppose it is the case of an oil stain?

Mr. HANLIN. In the case of an oil stain, where the cargo is likely to be damaged, as it is very likely to be, mention is made of that. In other words, an oil stain made on a box, which may prove the subject of damage, is indicated by the truckman making a notation of that fact.

Mr. CAMPBELL. Have you during the past few years, during the war and since, been able to control the employment of truckers and truck loaders?

Mr. HANLIN. No; not of the truckers and truck loaders. In fact, you had not a great deal of control over any particular class of labor during the war.

Mr. CAMPBELL. In whose employ have the truck loaders been?

Mr. HANLIN. The truck loaders are what we call public loaders. They make an agreement with the different shippers and consignees for the loading of their trucks; that is, they have regular established rates. It is simply an outside proposition.

Mr. HARDY. Suppose you have a careless truckman receiving goods for the consignee and the goods were damaged but no note made of the damage in the receipt of the papers that are given to him, and he fails to note it, and signs for them, and takes them in that shape without any memorandum showing the damage. Is not the ship company by that neglect rather freed from any claim for damages?

Mr. HANLIN. I could not answer that question. I do not know just how the claim department would handle that. I rather think I am not qualified to answer that particular question.

Mr. HARDY. So far as the shipper is concerned, the necessity of those notations is a very essential thing, is it not?

Mr. HANLIN. Yes; it is.

Mr. HARDY. Because if your ship company can get by with a clear receipt and without any note of the truck loader, who is the agent of the consignee, they have avoided any liability?

Mr. HANLIN. Yes; that may be. I do not know just how that would be handled, as that has not come to my notice.

Mr. HARDY. Suppose there should be a package with part of it taken out, broken and gone, which might subject your ship company to a claim for loss, but there was no note made of that damaged condition of the package or that loss in any of the papers until it got onto the wagon of the truckman and he discovers it, perhaps, when he is on his way to his employer, the consignee; you have a clear case of loss when the consignee loads it, but there is no evidence fixing any liability on the ship company, is there?

Mr. HANLIN. As I say, I am not qualified to answer how that would be handled.

Mr. LAWS. Suppose there was an odor from a package of woolens from fish oil, for instance, and probably the truckman is an illiterate man; that would not be noted, would it, an odor in the event of wool being stowed in a compartment with fish oil? The truckman would not know anything about whether that was a proper odor or not, and that would not be noted on the receipt, would it?

Mr. HANLIN. I do not know whether the truckman would know or not.

Mr. LAWS. The chances are he would not know anything about it, aren't they?

Mr. HANLIN. I do not know. It would depend on whether he was accustomed to handling that particular class of goods and on what instructions he had from his employers. You will find those fellows, as a rule, are pretty careful.

Mr. LAWS. If it was not noted there would be no way of knowing it until the consignee got the goods and found the fish oil odor, would there?

Mr. HANLIN. If there was not any notation?

Mr. LAWS. Yes.

Mr. HANLIN. No.

Mr. LAWS. Suppose it was something covered with burlap and the package contained something which had been damaged by water, but the burlap had dried out, as it does in many instances: Would there be any notation of that?

Mr. HANLIN. I do not suppose there would if it was not noticeable.

In addition to the checking of the trucks, in order to avoid undesirable characters from getting on the piers we require all parties to have a pass to go onto the pier. In other words, to avoid strangers getting on who have no business there and are likely to interfere with the cargo, we require all parties to have a pass from a company officer—some of the officials of the traffic department—identifying the parties who go on the pier. Also, in loading cargo and discharging, we place watchmen in each hatch where cargo is subject to pilferage to watch the loading and discharging and to make a note of any pilfering or damage that occurs to the cargo. That practice is carried out on all cargo that may be subject to pilferage. Of course, on the bulk cargo, which is not subject to pilferage, we would not do that.

We have an arrangement also on our ships, both loading and discharging, that the hatches are inspected by the chief officer of the ship or one of his subordinate officers, and also by a representative of the police department, immediately the hatches are opened on a discharging ship and the last thing before they are closed on the loading ship, and the two of them certify to the condition of the cargo. That is for the purpose of locating the responsibility in case the cargo should arrive at the next port in a damaged condition. We have found that has had a very good effect and has placed the responsibility directly on the ship's officers for the protection of its cargo during the trip.

As far as losses are concerned, one thing that should be taken into consideration is the opportunity for losses from lighters prior to

delivery, after leaving the railroads and prior to delivery to the steamship company where concealed losses may occur. A lighter would perhaps be around the harbor from 24 to 36 hours from the time the cargo is discharged from the railroad until its arrival at the steamship pier. Considerable occurs in that time. The lighter may be left entirely unprotected by the lighter captain, giving the opportunity for substitution there that comes in as a concealed loss.

In discussing that matter with a representative of one of the railroads a few days ago, he told me they had had two cases in the last 30 days where the lighter which was tied up to some dock at the port of New York during the night had been taken away during the night and returned before the next day. His impression was that those lighters were used at night for the removal of cargo from lighters in the harbor or for contraband service; but it shows the opportunity there is for pilfering and to get away with the cargo from the time it leaves the railroad until it is delivered to the steamship company.

Mr. CAMPBELL. Are those lighters at all in the custody and control of the steamship companies?

Mr. HANLIN. No, sir; they are not under our control.

Mr. CAMPBELL. Whose lighters are they as a rule; city lighters?

Mr. HANLIN. They belong to the railroads or to a private lighterage company; but the larger portion of our cargo is delivered by railroad lighters.

Mr. CAMPBELL. In what other way do these thefts occur?

Mr. HANLIN. Well, quite a number occur through trucks loaded with cargo being left at stables or in lots during the night. Shipment is made during the day, but on account of not getting away from the warehouse in time to make delivery, the truck will be tied up perhaps at a stable during the night and delivery made the following day. I recall one particular case of a truck coming to one of our piers that was supposed to have a shipment, I think of woolens or stockings, or something of that kind—I do not recall the particular cargo—and as the truckman brought it in we noticed something did not look just right. We opened it up and found the contents had been removed and the box filled up with stable refuse, indicating that the goods had been taken out during the night and the refuse put in the box instead.

We had another case of the delivery of a number of cases of whisky. They were in bond and when discharging from the truck one of our receiving clerks noticed they were apparently light. An examination was made by the customs officer and the shippers and we found the cases partially filled with empty seltzer bottles, newspapers, and articles of that kind. The whisky bottles had been taken out and other articles substituted.

We had another case of a shipment of gloves that came from Germany. After the consignee received the goods he wrote us there were no gloves in it. We had an investigation made and found the cases had been emptied of their original contents and filled with electric insulators and newspapers, and the investigation disclosed those insulators were not made in the United States, but were a German product—showing they had been substituted on the other side before they got to the steamship pier at all.

Mr. CAMPBELL. Where do your lines operate?

Mr. HANLIN. They operate from New York to Hamburg and to the Dutch East Indies, and also from Baltimore and Philadelphia to Hamburg.

Mr. CAMPBELL. Do they run intercoastal?

Mr. HANLIN. Yes, sir; they run intercoastal to the west coast of the United States.

Mr. CAMPBELL. You are the successor to the old American-Hawaiian Steamship Line?

Mr. HANLIN. Successor to the American-Hawaiian Line; yes, sir.

Mr. CAMPBELL. In those ports where your steamers call, how is the cargo delivered at the ports; when does your liability terminate?

Mr. HANLIN. At some of the ports it is on placing the cargo on the dock; at other ports it is on delivery to the consignee. It depends on the practice of the port.

Mr. CAMPBELL. Is there anything you do not do for the safeguarding of this cargo that you could do?

Mr. HANLIN. We have figured on everything we could to in every way give protection to the cargo, and our dock people and our police department are all impressed with the importance of watching it carefully to prevent pilfering, not alone because of the question of claims, but also because of the bad name it gives the company.

Mr. CAMPBELL. From what sources do you obtain your labor supply for all classes of your labor?

Mr. HANLIN. I do not just understand what you mean.

Mr. CAMPBELL. I may say to the committee I am asking that question with this thing in mind, that the class of labor that these companies employ, whether engaged in this trade he is in or in the Cuban trade, so far as New York is concerned, all comes from the same source. Is that right?

Mr. HANLIN. It all comes from the same source.

Mr. CAMPBELL. The chairman was not here last night when I called attention to the difference in thefts in the South American and the Cuban trades as compared with the European trade, as evidenced by the insurance rates. It seems to be conclusively proved that the great bulk of these thefts are not to be charged to the American laborers, but is due to the condition that exists in various South American countries.

Mr. HANLIN. It all comes from the same source.

Mr. KIRKPATRICK. Your testimony and that of Mr. Imlay establishes the fact that there are at least two lines that take very thorough care of the cargoes. What can you say about the precautions and care taken by other lines that have come within your own notice?

Mr. HANLIN. The lines that have come within my notice, as far as I know, take practically the same precautions.

Mr. KIRKPATRICK. Do you know of any that take a lesser degree of care?

Mr. HANLIN. No; I can not say that I do, because there are very few of the lines that I have discussed the thing with.

Mr. KIRKPATRICK. Do you know of a number of others that do take the same precautions?

Mr. HANLIN. I know of some others; yes.

Mr. KIRKPATRICK. You do not know of any that are more careless than you are?

Mr. HANLIN. More careless? [Laughter.]

Mr. KIRKPATRICK. Yes.

Mr. HANLIN. That is a hard question to answer.

Mr. KIRKPATRICK. Or less careful; I will put it that way.

Mr. HANLIN. I do not know enough about their details to pass on that.

Mr. KIRKPATRICK. You do not know of any lines that are less careful of their goods than you are, do you?

Mr. HANLIN. I can not say that I do, because I am not familiar with their details of operation.

Mr. LAWS. What results have you gotten from this care in the way of reducing pilferage losses?

Mr. HANLIN. We have gotten good results.

Mr. LAWS. Do you make any additional charge in the freight rate for giving the shippers this additional care?

Mr. HANLIN. That is a matter that would have to be answered by the traffic man. Our operations are divided between the physical handling of the cargo and traffic. Our people know there are certain classes of cargo, which they use special care on, which are subject to pilferage. Whether they get additional rates on that I am not qualified to answer.

Mr. LAWS. But as a result of the care you take, you get good results, and the pilferage losses are reduced very materially, are they not?

Mr. HANLIN. We feel they are. We feel if we did not take the precautions we do to-day that our losses would be very much greater. It is not a new thing; ever since we have been operating it has been handled in the same way.

Mr. LAWS. Are you willing to pass on the question as to whether or not your line would be willing to have a bill of lading issued omitting the exemptions from liability and as to the amount of liability, and from all these other exemptions, for a proper rate of freight, of course?

Mr. HANLIN. That would not come under my department.

Mr. LAWS. That would not come under your department?

Mr. HANLIN. I would have nothing to do with the freight rate.

Mr. LAWS. You would not want to pass on that?

Mr. HANLIN. I would not; it is entirely out of my department.

Mr. LAWS. As to these other lines, as regards the precautions taken, you would not undertake to say what lines they were or what precautions were taken on any other lines?

Mr. HANLIN. I would not be competent to say as to that, because I do not know anything about the details except from general discussion. They may do things which we do not do and we may do things which they do not do; I do not know.

Mr. LAWS. Thank you very much, sir.

Mr. LEHLBACH. The committee would now be very glad to hear from Commissioner O'Connor, a member of the Shipping Board, on the subject of these losses.

STATEMENT OF HON. T. V. O'CONNOR, COMMISSIONER, UNITED STATES SHIPPING BOARD.

Commissioner O'Connor. There are a few things I would like to ask the steamship men. Should not there be some law passed, when you are passing this bill, to make the truck delivering companies responsible from the time they get the goods on board of the truck until they deliver to the ship?

Mr. Campbell. Congress has the power under the Constitution to legislate with respect to interstate and foreign shipments. My judgment would be that would be one thing in the case of foreign shipments on which Congress can legislate to advantage.

Commissioner O'Connor. I found in my experience on the water front there is a great deal of stealing done on the truck from the time it is put on the truck, at the delivery point, until it gets to the steamship.

Mr. Campbell. We find so, too.

Commissioner O'Connor. And many times you have taken empty boxes across, as this gentleman has said, filled with almost anything you can think of and with the original contents gone. If that can be brought about, I think it will make a big difference in the stealing.

Mr. Campbell. I think it would be a very great opportunity myself for Congress to put upon the books criminal statutes which will cure this situation very materially.

Commissioner O'Connor. This gentleman just mentioned the convictions he had. I maintain where they get convictions that a sentence of 10 days or 20 days is not sufficient to cover the crime committed; that it ought to come under the United States law with a maximum sentence, and if a few of them got a good, heavy sentence, a very stiff sentence, a lot of it would be stopped.

Then, the next thing is to get the "fence" that is handling this stuff at the water front. They are the people who are responsible for a big part of the thing. They take those goods from the man at little or no cost and get rid of them for big money. If there is any way you can make that a misdemeanor or something, and make it unprofitable for the man buying those goods and make him amenable to the law, you would accomplish something. There is not 1 in 20 at the present time that has anything done with him. It gets to a certain point and all the lawyers and attorneys you have got can not get beyond that point; and if you can make the fence amenable to the law in the same way, I think it will be a big thing.

Mr. Campbell. Congress can do it, and you are getting at the remedy for the first time before this committee.

Commissioner O'Connor. I am not getting at it. I think the American Line and many of the lines will tell you I outlined a plan and told them to get ex-policemen and ex-firemen on their pay rolls to watch those things years ago. My reason for that, for getting that class of men, was that we would have a class of men who were responsible to the city for their pensions and they were going to see that those pensions were safeguarded and would carry out their duty. I know of many cases where they have robbed 30 boxes of sugar and taken them off the pier in one night, and where $30,000 of furs were taken off the pier in one night; and it could not be done

without the cooperation of somebody that had charge of the pier. I do not think there is any question about that. They could not have carried away 30 boxes of sugar in one night without somebody on the pier cooperating with them, and if the companies would employ the right personnel, that is one of the biggest things, and these companies have not been employing the right personnel in watching their goods.

Mr. CAMPBELL. Have you any criticism to make of the United American Line?

Commissioner O'CONNOR. No; and no criticism to make of the Ward Line and the Italian Line. They have all followed that policy.

Mr. LEHLBACH. Those persons on the pier who necessarily must connive with the men removing the goods in large quantities, such as you have stated—30 boxes of sugar, etc.—are employees of the steamship companies?

Commissioner O'CONNOR. They must be. They could never get away with it if they were not in connivance with them.

Mr. LEHLBACH. And pilferage from the piers to any extensive degree could not be done without the connivance of the steamship company's employees?

Commissioner O'CONNOR. Without the connivance of some of them. Some of them in charge let the stuff get away and forget about it. If the steamship companies would follow that thing up in their personnel and try to get this Congress to enact a law to hold the truck companies responsible for the stuff, I think that a great deal would be done to overcome a lot of this stealing. Ninety-eight per cent of the men working for the steamship companies do not want this stuff to go out. I can say to you we have had several strikes in the port of Buffalo or the port of New York in the last year, where the men simply refused to go to work and would not give you a reason except they would tell you they were "not going to work with this man." Have not some of your steamship companies had that happen, where the men have taken the position they absolutely are "not going to work with that man," and would not tell you why, but you got rid of that man and he was the fellow who had been doing the stealing althought you could not get anything on him?

Mr. HANLIN. We have had cases where we were sufficiently certain to make the man not desired.

Commissioner O'CONNOR. There are a good many companies that have had that happen. That has been the agitation that has kept going on with the organization officers for a number of years, because it was making thieves out of 24 men where only one man would be doing the stealing.

Mr. LEHLBACH. Will you state for the record what connection you have had with labor in the past, in dealing with the steamship companies?

Commissioner O'CONNOR. In what way.

Mr. LEHLBACH. Were you the president of any labor organization dealing with steamship companies?

Commissioner O'CONNOR. I was president of the International Longshoremen's Union, and I want to say I worked in harmony with almost every steamship company in the country.

Mr. EDMONDS. Is the International Longshoremen's Union strictly an American organization, or do you take in any foreign organizations?

Commissioner O'CONNOR. It takes in Canada and our possessions.

Mr. EDMONDS. Canada, the United States, and our possessions?

Commissioner O'CONNOR. Yes.

Mr. KIRKPATRICK. Do you know whether or not other companies follow the precautions that these men have testified to, but who are not up to their standard?

Commissioner O'CONNOR. I know of a company that came to me one day and wanted to know what to do. They had lost a lot of goods. I said, "Who have you watching your goods?" They said, "We have a certain detective agency watching them." I said, "Watch the men working for that company," and the next day they got three of the detectives.

They have not done that to the same extent with some of the smaller companies we have had operating in the last two or three years. The big companies have done everything they could to overcome this. This gentleman expressed it correctly when he told you they had not been able to select their men since the war. When you figure that during the war we lost 38,000 of our men to go across the seas, and had to pick up button sewers and everything else to fill in on the piers, you can get some idea of that. But the men now are getting back and I think you will find the situation a great deal better in the future. But whatever you do, if you can do it, make the law so strict that it means a good stiff sentence every time they get caught and send them to the United States court. There is no use sending them to the city courts, because 99 out of every 100 are turned loose. I can cite you one instance of the Bush Terminals where they caught a man going out. I suppose he must have had 150 pounds of property stretched around his body. He fell down with the property and could not get up with the load. [Laughter.] They took him into the police court of the city of Brooklyn and the judge there, after several weeks' delay, decided the man had not taken anything off the company's property—that he had not got off their property with it—and discharged him. [Laughter.]

Mr. LAWS. Somebody had seen the judge in the meantime?

Commissioner O'CONNOR. Somebody had seen the judge in the meantime: there is no question about that. Every man who is arrested, they have all kinds of power and influence with the city judges, and if you can get this into the United States court you will make a lot of thieves you have now know they are going to get soaked and they will quit it.

Mr. LAWS. I do not believe you would be able to do that in the case of a local shipment, but you might possibly do it in the case of an interstate shipment. You might make a Federal statute in the case of an interstate shipment, but in the case of a local shipment, where it would be a local crime, it would probably have to fall in the local criminal court.

Commissioner O'CONNOR. Is it not all interstate shipment: does it not all come from some other State into New York or is intended for interstate shipment from New York, and the minute the stuff manufactured in New York gets on the truck to go to the pier is it not part of an interstate shipment?

Mr. LAWS. That is interstate. In the case of interstate shipments you can do it.

Mr. CAMPBELL. And foreign, also.

Mr. LAWS. Yes; foreign, also.

Mr. LEHLBACH. Can not the Federal statutes make the theft of property from interstate commerce, from the possession of the carrier, a Federal crime?

Commissioner O'CONNOR. They do it on the railroads.

Mr. LAWS. I do not know enough about criminal law to say; I am really not up on that.

Mr. LEHLBACH. I happen to know as a fact that is so.

Commissioner O'CONNOR. That has been done on the railroads and it has made a great deal of difference. They get four or five years for the crime instead of 10 days.

Mr. EDMONDS. If that is true of our interstate-commerce jurisdiction, why should not these cases be brought in the United States court?

Mr. LEHLBACH. There is no statute making it a Federal crime as yet.

Mr. EDMONDS. There must be in connection with the railroads.

Mr. LEHLBACH. There is; and they bring those cases in the Federal courts with regard to the breaking into freight cars.

Mr. EDMONDS. Why did they not bring that case of stealing at the Bush Terminal in the United States court?

Mr. LEHLBACH. Because the act does not cover that.

Mr. CAMPBELL. That would probably be because the men have gotten into cars of interstate and foreign commerce, which was a crime that act fitted. Moreover, as testified by Mr. Imlay last night, they have had in our port United States district attorneys up there who have required absolute proof before they will submit their cases to the grand jury—proof which it was impossible to produce. Another thing which exists in the situation which is coming before Congress is that the United States district courts of New York are way, way behind in their work. The Government alone has pending in the district court of New York over a thousand admiralty cases awaiting trial. You could not bring a case to trial within a year to a year and a half or two years to-day in New York, and they are down here to Congress begging for the appointment of two more judges and can not get them.

Mr. EDMONDS. Bring your stuff over to Philadelphia and we will give you justice.

Mr. LAWS. We are way behind in Philadelphia, too.

Mr. EDMONDS. Sh! Sh! Don't tell them that; you want to praise Philadelphia. [Laughter.]

Mr. LAWS. You want more judges there.

Mr. CAMPBELL. Is not my statement true, Mr. Laws, as to the conditions?

Mr. LAWS. Absolutely; and we want more judges in Philadelphia; we can not get our cases tried in Philadelphia to-day.

Mr. HANLIN. In addition to the precautions we take, we also have an arrangement under which we pay a bonus to the members of our police force in the case of convictions for pilferage. In other words, it is just a small bonus to make them more active and keep them a little more alert, if possible.

Mr. EDMONDS. I can see now why you got convictions and the Ward Line did not.

Mr. HANLIN. It is our own police force; not the city police force.

Mr. EDMONDS. They have their own police force, too.

Mr. CAMPBELL. Now, Mr. Chairman, you have rather deterred me from putting on any more witnesses by suggesting I am taking too much time, and I do not know what to do. I want to lay the facts before you and I can not do it except by calling witnesses.

Mr. LEHLBACH. Proceed. Who will you call next?

Mr. CAMPBELL. I would like to hear from Mr. Guilford, of the International Mercantile Marine Co.

STATEMENT OF MR. R. S. GUILFORD, NEW YORK, N. Y., MANAGER OF THE WESTBOUND FREIGHT AND CLAIMS DEPARTMENT, INTERNATIONAL MERCANTILE MARINE CO.

Mr. GUILFORD. I am manager of the westbound freight and claims department of the International Mercantile Marine Co.

Mr. Chairman and gentlemen of the committee, I think that the operations in regard to the watching of cargo on the dock have been very fully explained by Mr. Imlay and by the representative of the United American Line, and our system is very similar, except that we employ a detective agency rather than handling our own men. I think the result is quite as good, however, and we have full supervision of all the men working on the piers. The conditions have greatly improved during 1921, as compared with the previous years, and we feel that the enormous pilferages which did occur during the period from 1914 up to 1920 were due entirely to abnormal conditions, to labor troubles and strikes, and that from now on we can hope for great improvement.

During the year 1920, our cost for watching cargo on the piers, both the piers we operate in the Chelsea district, amounted to approximately $440,000, and that is a very heavy tax on our operating expenses. It figures up between 50 cents and $1 a ton to watch and tally our cargo, and that, of course, is greatly in excess of the cost in prewar years.

Special cargo is handled very much the same as described by the Ward Line and by the United American Line, and we have recently been able to get better cooperation on the part of ships' officers, due also to labor conditions, and all in all we feel that we are doing everything that we can to prevent pilferages.

We have not very complete statistics regarding claims paid, but I do think that on the Liverpool or eastbound traffic the claims for 1920 as compared with the claims for 1913 and 1914 were about 500 per cent in excess of the claims for the previous period. For 1921 I am quite sure they are going to be very much less because I see continual reports of the out turns of cargoes, and can by that measure determine that we can not expect such serious results as we had during abnormal times.

I do not think you wish to have me describe in detail and take up the time of the committee as to the methods on the pier, as they are very similar to those adopted by the other companies.

Mr. LEHLBACH. Your testimony would be that the same procedure and the same methods of safeguarding are pursued, as outlined by Mr. Imlay?

Mr. GUILFORD. Mr. Imlay or any representative of any other American line. I would not want to make any comparison between them. I think we are all after the same end and that we are doing everything humanly possible. I do not think that by paying out any more money we would accomplish any better results.

Mr. LEHLBACH. Can you tell the committee to what extent the other companies, with the exception of those whose representatives have testified here, adopt similar safeguards, police precautions, and watch precautions?

Mr. GUILFORD. We made a canvass of the various lines to determine if we were in any way lax or if they had any better methods than we have and we found that they were all; that is, all the established lines, the regular European lines we consulted with, taking virtually the same measures of precaution.

Mr. CAMPBELL. What are those lines? Let us have the names.

Mr. GUILFORD. Furness, Withie & Co., the Italian Line, Ward Line, Munson Line, the United Fruit, the Cunards, and the Anchor.

Mr. CAMPBELL. Grace & Co.?

Mr. GUILFORD. We did not consult Grace & Co. because our services are in no way the same. We do not handle the same class of traffic. I think those are the principal companies we consulted.

Mr. CAMPBELL. Did you examine into the methods used by these new shipping concerns who have been brought into the business?

Mr. GUILFORD. No; we did not; because we did not expect we could learn from them.

Mr. LEHLBACH. Did you ascertain what the precautions exercised by the Bull Line were in regard to safeguarding of cargo?

Mr. GUILFORD. I think they were also consulted at the time.

Mr. LEHLBACH. Do you know whether their methods in any degree differ from yours and those of other companies?

Mr. GUILFORD. I think that they possibly did cover the matter of checking a little further than we did.

Mr. LEHLBACH. I might say that a representative of the Bull Line is on his way here now to give the facts. I do not know what they are.

Mr. LAWS. Mr. Guilford, you are the claim agent of the International Mercantile Marine?

Mr. GUILFORD. Yes, sir.

Mr. LAWS. What amount of claims for losses, pilferage, and nondelivery were presented to that company in 1920, say, and in 1921?

Mr. GUILFORD. We keep no record of the number of claims or the amounts of claims presented. We keep a record of the amounts of the claims paid.

Mr. LAWS. Then you can not tell us what percentage of the claims presented is paid?

Mr. GUILFORD. There is really no relation between the two—between claims presented and claims for which we are really liable to pay.

Mr. LAWS. What do you mean by no relationship?

Mr. GUILFORD. Because we receive claims, and I think it is a rule of the underwriters that all claims must be presented to the steamship company before the underwriter will deal with same. We get many of that type of claims which we automatically decline, because it is not our liability, and why should we keep a record?

Mr. LAWS. What underwriter is that?

Mr. LEHLBACH. Can you give us an idea of what percentage of claims presented are in your judgment valid claims?

Mr. GUILFORD. I never worked it out on the percentage basis, but I would not say it is over 10 per cent.

Mr. LEHLBACH. Ten per cent are valid claims and 90 per cent are claims which you do not acknowledge as valid or do not consider valid?

Mr. GUILFORD. They are not proper claims against the steamship company and do not come within our liability under the law.

Mr. EDMONDS. On that point, what do you mean by not coming within the law and not being valid? Do you mean that with these men that did not make claim within five days, the time in the bill of lading, you would not consider them?

Mr. GUILFORD. No; I did not refer to that.

Mr. EDMONDS. You would consider that not a valid claim?

Mr. GUILFORD. We do not take that into consideration in the ordinary course of business if it is a valid claim that is within the risk. That is what we are guided by.

Mr. EDMONDS. In other words, you do not always take advantage of the fact that you could refuse a claim because it was within the time limit mentioned in the bill of lading?

Mr. GUILFORD. We do not.

Mr. LAWS. Do you take advantage of the claim, for instance, of leakage, breakage, and all that class of thing, as the bills of lading exempt your line from as a defense?

Mr. GUILFORD. We rely upon the Harter Act as it is now written, to a great degree, which seems to properly limit the liability of the carrier. There seems to be no misunderstanding on that.

Mr. LAWS. Do you take advantage of the limited amount of your liability?

Mr. GUILFORD. Do you refer to the $100 clause?

Mr. LAWS. Yes.

Mr. GUILFORD. That is customary; yes.

Mr. LAWS. Who determines the question as to whether or not the claim is valid for your company?

Mr. GUILFORD. Well, that is not exactly centralized. All New York claims I pass on.

Mr. LAWS. You pass on them?

Mr. GUILFORD. Yes. As to Liverpool claims, we have a competent man over there to pass on them.

Mr. LAWS. Does any insurance company or underwriter pass on that at all?

Mr. GUILFORD. In some cases.

Mr. LAWS. What company is that; the American Protection & Indemnity Co.?

Mr. GUILFORD. We have no steamers in that association.

Mr. LAWS. Are they in the English company, protection and indemnity?

Mr. GUILFORD. We have a few steamers in the Western England Association.

Mr. LAWS. And in that event they pass upon them.

Mr. GUILFORD. Certain classes of claims; but, as far as I know, it has never interfered with the orderly procedure of handling claims and paying our losses in any way, shape, or manner.

Mr. LAWS. But as it stands to-day you can not give the committee a statement as to the number of claims presented, say, in 1920 or 1921, the number and amount of claims presented, the number and amount that were paid for pilferage, short delivery, nondelivery, and the defense, the nature of the defense that was set up as to those claims, or the approximate amounts of those claims, can you?

Mr. GUILFORD. The question is somewhat involved and you include immaterial facts there. You ask for information that is immaterial.

Mr. LAWS. We do not think so.

Mr. GUILFORD. As far as the number of claims presented is concerned, it is not material.

Mr. LAWS. That is a difference of view. I asked you whether you could do that.

Mr. GUILFORD. At this moment?

Mr. LAWS. Yes.

Mr. GUILFORD. I could give you some figures as regards the New York service and some figures as regards the Liverpool service.

Mr. LAWS. Give us the best you can, for the information of the committee; the total number of claims, for instance, presented for loss, theft, or pilferage, or nondelivery, say, in 1920.

Mr. GUILFORD. We have never kept a record of the number of claims presented.

Mr. LAWS. The amounts of them?

Mr. GUILFORD. Presented?

Mr. LAWS. Yes.

Mr. GUILFORD. No.

Mr. LAWS. Then, of course, you can make no comparison of the number or amounts paid.

Mr. GUILFORD. I can tell you that is absolutely immaterial from actual practical knowledge of handling claims for several years.

Mr. KIRKPATRICK. I did not quite understand your answer to one of the former questions. Did you say that it was the established policy of your office not to raise the question of the time when notice was given at all?

Mr. GUILFORD. It is the policy not to raise the question.

Mr. KIRKPATRICK. Not to raise the question at all?

Mr. GUILFORD. I do not say but what we do raise that question if there are reasons why we should raise it. That is, we are dealing with all classes and conditions, and there are times when we must avail ourselves of the limitation, particularly if we feel that the claim is unjust. If we feel that a man is simply entering a claim and hopes to recover on a technicality, then we would resort to a technicality also, but if it is claim for which we are liable we do not quibble.

Mr. CAMPBELL. Can you give us any figures as to the amount of claims you paid in 1920?

Mr. GUILFORD. I have before me a memorandum sent out by our Liverpool office, which covers claims on eastbound traffic and makes comparison between 1913–14 and 1920. I infer that during the period of the war they did not keep exactly the same records; that is the reason I have not them before me. For various reasons steamers were requisitioned by the Government and conditions were absolutely abnormal, so there is no use of making comparisons. For 1913 pilferage claims were paid in the amount of £1,305: 1914, in the amount

of £1,977 pounds; and in 1920 in the amount of £12,495, showing an increase of something like 700 per cent compared with the period of 1913.

Mr. LEHLBACH. What is the increased business done between 1914 and 1920?

Mr. GUILFORD. There was a considerable increase in 1920.

Mr. LEHLBACH. Not in the same proportion?

Mr. GUILFORD. Not in the same proportion. It indicated a condition due to abnormal labor conditions which existed during that period.

Mr. EDMONDS. What has it been since the first of the year 1921?

Mr. GUILFORD. I think from the first of the year, possibly further back than that, three months back from the first of the year, conditions have been very much better, due to a change in the attitude of labor, not alone our own labor but labor the world over. I do not think it would refer more particularly to longshoremen than it would to factories, where they pack the goods, and throughout.

Mr. EDMONDS. What additional percentages is there with the decrease of business, or have you had a decrease in business?

Mr. GUILFORD. There has been a slump in our business the same as with all business.

Mr. EDMONDS. Would you say that the percentage of claims, considered with the decrease of business, was less than before?

Mr. GUILFORD. The percentage is less. It has decreased more than the decrease in the ratio of business. The actual conditions are dependent on the quantity of merchandise handled.

Mr. LEHLBACH. I believe from what you have said before that you are not in position to give us the increase in 1920 over 1914 of the number of claims presented.

Mr. GUILFORD. I could get that information, but we have never thought of it. The number of claims has never meant anything to us.

Mr. LEHLBACH. Is the ratio between the claims paid and presented liable to be constant, or would the increase in number of claims be in about the same proportion as the increase in amount of claims paid?

Mr. GUILFORD. The increase in the number of claims presented?

Mr. LEHLBACH. Would the increase in the number of claims presented be practically in the same ratio as is the increase in the amount of claims paid? I mean, is the proportion between claims paid and claims presented about the same right along?

Mr. GUILFORD. Yes.

Mr. LEHLBACH. The claims paid are about 10 per cent of the claims presented.

Mr. GUILFORD. I think that would be the figure.

Mr. HICKOX. During the period from 1915 to the beginning of 1921, were there any considerable number of new steamship concerns operating in New York?

Mr. GUILFORD. Many; yes. They started in just at that period or a little later.

Mr. HICKOX. During that period?

Mr. GUILFORD. During that period; from then on.

Mr. HICKOX. Have any considerable number of those ceased to operate by this time?

Mr. GUILFORD. Yes.

Mr. LAWS. Have you a copy of that bill of lading?

Mr. GUILFORD. I haven't it with me.

Mr. LAWS. Will you kindly get one? I would like to have one of your bills of lading on file.

Mr. LEHLBACH. We are going to get all the bills of lading.

Mr. HERRICK. Do you pass on the claims of the Red Star Line on eastbound traffic?

Mr. GUILFORD. In regard to claims in connection with eastbound traffic it has been the practice as long as I can remember to handle same at port of destination. That seems to be the proper method of handling the claim. That is, the consignee is there and knows all about the local conditions, and our people have full records.

Mr. LEHLBACH. The goods are there, too.

Mr. GUILFORD. The goods are there, and why should we settle a claim here that should be properly settled on the other side? I will say that the packers have tried hard to get us to settle claims on this side, and I have done all that I could to discourage that practice because it is not a practical method of handling claims, not because we wish to evade any liability or anything of that kind. That does not make any difference. If they want to force the issue, they can collect claims just as much here as there. There is nothing in the laws of the country to prevent it. I take it that will answer your question, that we do not, in practice, pass upon the eastbound claims here.

Mr. HERRICK. If you did pass on them here, would you hide behind the bill of lading on a shipment of meats that had been stowed in a hold that had previously contained carbolic acid?

Mr. GUILFORD. I do not think there is anything in our bill of lading that would protect us.

Mr. HERRICK. Your bill of lading reads that you are not responsible for loss or damage to goods on account of odors.

Mr. GUILFORD. It may be in the bill of lading, but you can not get away with bad stowage. This idea of our passing the buck, I do not get that at all. We hear from our shippers that we are all the time passing the buck. I have wished we could, but we can not.

Mr. HERRICK. I have asked the question.

Mr. GUILFORD. If that was the proposition, we would hide behind nothing.

Mr. HERRICK. Thank you.

Mr. CAMPBELL. How many steamers have you been operating and to what ports do you operate?

Mr. GUILFORD. I think it is something like 110 steamers. I have not the exact figures.

Mr. CAMPBELL. What are the out ports?

Mr. GUILFORD. We operate between all North Atlantic ports and Liverpool, London, Manchester, Southampton, Glasgow, and to continental ports of Antwerp, Hamburg, Dantzig, Naples, Genoa, Palermo, and also have services with allied companies to Australia and New Zealand.

Mr. CAMPBELL. At the peak of the service how many Shipping Board boats did they operate?

Mr. GUILFORD. I speak of the boats entirely—76.

Mr. EDMONDS. You have no idea of the place where this loss occurs?

Mr. GUILFORD. Pilfering occurs from the time the goods are packed until they are delivered, warehouse to warehouse, and to try to say where that occurs is almost impossible. We do know and have demonstrated that very much of the loss due to pilferage occurs before we received the goods, and we have very concrete instances of that kind.

Mr. EDMONDS. Are you able to check that up on the pier?

Mr. GUILFORD. Here is the difficulty from a practical standpoint: We have to load between fifty and one hundred thousand packages of merchandise into the steamer within a period of 48 hours. You will understand how impossible it is for us to carefully scrutinize every package. It can not be done. You can not load your ship. That is the practical end of it.

Mr. EDMONDS. What do you do with the package where it shows tampering?

Mr. GUILFORD. If a package shows signs of having been tampered with we have it opened if it is practical to have that operation done and determine the contents and then we sign for the contents of the package. If it does not show any outward signs we can not examine it, it is not practicable and it can not be done, and for a certain class of merchandise it would not do to open it on a dock. As I say, the fact that we handle so many packages in such a short space of time gives the previous carrier the opportunity to saddle on us emptied packages and packages containing bricks and all sorts of things. That is what we have to contend with. When we come to the delivery of the package at the port of destination—this is where it would apply to all ports—there is a much longer period given for the consignee to remove the goods. In New York we give five days after the final discharge of the ship. The consignee is permitted to walk on the piers and examine his packages; he knows the goods, knows his packages, and he can tell immediately if a package has been tampered with, where a man in our employ would not be able to.

Mr. EDMONDS. Some of the packages accumulate with cargo and pile up there.

Mr. GUILFORD. Not to any great extent.

Mr. EDMONDS. Suppose you have a package that evidently shows that it has been opened. What do you do in that case, with a package that looks as if it was tampered with?

Mr. GUILFORD. Notify whoever represents the shipper. It may be the lighterman or the truckman. If it is truck freight the truckman is the only man we know, and he is there and supposed to represent the shipper.

Mr. EDMONDS. Do you think it would improve the conditions to notify the shipper? If the captain of the lighter was doing the pilfering he would not tell about it.

Mr. GUILFORD. That becomes a matter of record, and the captain can not evade the responsibility if he is responsible.

Mr. EDMONDS. Do you get convictions where you catch anybody?

Mr. GUILFORD. That is rather difficult. We have had convictions, but it is not satisfactory. We meet all sorts of difficulties. We try to get the Federal authorities to interest themselves in the arrest of men where goods are in bond, but we have all kinds of difficulties and have to go through a lot of red tape to get anyone interested, and then they tell us the district attorney is very busy; he will not listen

to these cases and we do not get anywhere. In a local court, before the magistrates, it is hopeless. We have had cases where we have caught red-handed men with merchandise and been able to identify that merchandise as coming from a particular case. That is, we knew it to be a fact. The magistrate would say, unless you produce the man who actually packed that case, there is no charge here.

Mr. EDMONDS. Can you get convictions in England?

Mr. GUILFORD. Absolutely. The laws there are very rigid and convictions are commensurate with the act.

Mr. EDMONDS. You have cases that you know where the cargo has been pilfered by the crew or on the pier?

Mr. GUILFORD. Absolutely. We can tell that exactly, really. The methods of watching cargo and relations between the ship officers and ship staff are such that we can know exactly whether a package has been pilfered before it is landed on the pier. We have reports prepared which are signed by both the ship's officers and by the man on the pier. So you compare one with the other, and you know exactly what has occurred on the pier, and after discharge of the ship; so that certain pilferages may be traced to the ship and certain other losses to the pier.

Mr. EDMONDS. What percentage of these damages in England do you pay for in pounds or dollars?

Mr. GUILFORD. In pounds.

Mr. EDMONDS. That is not money to-day. You pay for it in pounds?

Mr. GUILFORD. Yes.

Mr. EDMONDS. Does your bill of lading call for pounds or $100?

Mr. GUILFORD. For $100 in most cases. I think some bills of lading carry £20.

Mr. EDMONDS. You use both bills of lading. In your subsidiary companies you use the pound bill of lading?

Mr. GUILFORD. On eastbound it is $100 or $150.

Mr. EDMONDS. Do you settle that in American money or American value?

Mr. GUILFORD. We settle in American values.

Mr. EDMONDS. Based on the current rate of exchange?

Mr. GUILFORD. Yes; $100 means to-day £25.

Mr. EDMONDS. A shipper getting a settlement in Europe would get exactly the same money as here?

Mr. GUILFORD. Exactly the same; there is no difference whether he makes his claim there or here. We do not get many complaints regarding the claims. I do not know just what this is all about. Our consignees and shippers are fairly well satisfied. We get some complaints in the ordinary course of business.

Mr. EDMONDS. Do you do South American business?

Mr. GUILFORD. No.

Mr. EDMONDS. You probably know why you do not do some down there.

Mr. GUILFORD. I do not quite understand how any steamship company can evade its liability. We have not found a way to do it if we chose.

Mr. EDMONDS. You have evaded your liability under the Harter Act by reducing your liability to $100.

Mr. GUILFORD. The Harter Act is an accomplished fact. I am not arguing that point.

Mr. EDMONDS. Your liability being limited to $100, under that you have evaded it on a package worth $10,000.

Mr. GUILFORD. We do not consider that evasion. That is our whole fabric of rate making, which is based on the limitation. Why do you call it evasion?

Mr. EDMONDS. I am not saying anything to your detriment.

Mr. GUILFORD. Evasion is detrimental.

Mr. EDMONDS. I did not mean it to be detrimental. I only tried to get the facts.

Mr. KIRKPATRICK. Do you have a higher tariff for goods of greater value which you will quote on demand?

Mr. GUILFORD. I am not the rate man. I do not know that detail. I know about the westbound rates. I quote westbound rates. As far as concerns the eastbound movements, of my own knowledge I do not know.

Mr. KIRKPATRICK. As a claim agent, has that situation ever come before you of quoting on full value?

Mr. GUILFORD. That must always be considered.

Mr. KIRKPATRICK. I want to ask you whether there has ever been a claim made before you as the claim adjuster based on the full value for which the shipper paid the higher rate?

Mr. GUILFORD. I would like to answer that question by a little claim I have before me now. The shipper declared a value of 1,800 lires—$75 according to the rate of exchange. The shipment moved from Naples to New York. A package was lost—disappeared; we did not know what happened to it.

The consignee presented a claim, substantiated by a certified invoice, showing that the loss was $2,908. Now, under your proposed amendment to the Harter Act, we can not limit our liability even to the declared value, but have to pay $2,908 and only collect freight on the valuation of 1,800 lire. Of course, the amendment can not pass when you think of a situation of that kind. There must be some obligation on the part of the shipper, at least, to declare the correct value, and that should be considered and will be considered.

Mr. KIRKPATRICK. Have you ever settled claims as a claim adjuster for the full value of the goods over and above $100 because the shipper paid a higher rate than the regular rate to have the goods shipped?

Mr. GUILFORD. We quote a rate in addition to the rate on ordinary traffic, which waives the liability, the $100 liability, and in that event pay the claim in full.

Mr. KIRKPATRICK. Have you ever settled a claim of that kind?

Mr. GUILFORD. Repeatedly.

Mr. LAWS. What act did you refer to when you just said the act?

Mr. GUILFORD. Amendment to the act.

Mr. LAWS. Amendment to what act?

Mr. GUILFORD. The Harter Act.

Mr. LAWS. You are talking about a proposed amendment?

Mr. GUILFORD. Yes.

Mr. LAWS. To which one of these proposed amendments are you referring?

Mr. GUILFORD. Contained in Senate bill 327.

Mr. HUEBNER. Do you refer to the McKellar bill?
Mr. GUILFORD. Yes.
Mr. LEHLBACH. The committee will stand in recess until 2 o'clock.
(Thereupon, at 12.45 o'clock p. m., the subcommittee recessed until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee reconvened at 2.15 o'clock p. m., pursuant to recess.
Mr. EDMONDS. The committee will come to order.

STATEMENT OF MR. WILLIAM E. BERNARD.

Mr. BERNARD. I represent the National Board of Steam Navigation of New York and the Vessel Owners and Captains' Association of Philadelphia.

We have had a conference with the various transportation interests represented in both associations, and every precaution known to them has been tried to avoid the losses occasioned by theft and pilferage. Most of the transportation coming to the steamship companies, as has been explained by testimony previously, is handled by either rail in connection with their own lighters to alongside of ship or by truck from the shipper to the pier of the steamship company. After the receipt for shipments by the steamship company, the system of precaution taken has been ably explained to the committee by previous witnesses. This in many instances is elaborated by some of the steamship companies; in others they are a little bit lax.

Most of the trouble in the recent increase in theft and pilferage has been personnel or the morale, which we have had to contend with. Everyone in the shipping business knows exactly what they have had to do toward the operation of their vessels. Delays have been occasioned by our inability to get vessels loaded with freight, and after loaded with freight the proper bunkering, until the early part of this season, when we are now getting back to prewar or normal times. This not only exists in export business but it exists in coastwise or local inland transportation. We have had it for years to some extent, but in recent years it has been reduced considerably; in canal or in inland transportation there seems to be that unknown privilege given to the handler of merchandise, and I must here remark that the men are not cognizant of any clauses or liabilities that the carriers may have that would give them the privilege of pilferage or theft, and it is not done knowingly with the idea that the carrier does not take responsibility for that loss.

I am quite sure if such was the case that if the men were going forward with such knowledge as has been expressed here by a great many of the shippers that the carrier would not be responsible for any of the losses it would be carried on to a bigger extent, possibly, than what it is at the present time. I know your committee wants to do the just thing between shipper or carrier, and all in connection with the transportation of commodities, whether it be local, coastwise, or export. It means a great deal to this country, building up an American merchant marine. It is bound to act to their detriment if you can put the cause upon a certain body, that this thing is protected in a sense by the carrier or by the truckman in order to facili-

tate certain gains that they might derive from it. They have got to have certain means of disposing of this material, for it is stolen in quantities, in some instances, quite large, as explained to your committee by our other friend here the other day, and even he collected a claim from the railroad company for a loss after knowing that the railroad company had a clear receipt of the delivery of that material to the steamship company. As explained by the gentleman this morning, it is impossible in order to facilitate shipments to take the time to open up and examine the contents of a package. Freight would be delayed, as ofttimes is the case. I have known it in shipments that have been sent that part of the shipment on account of the hurried condition of getting the vessel away has been left on the dock. In the matter of claim, in that respect, the consignee could not make his claim until he found out what became of that part of the shipment. We have frequently placed boats alongside of steamers as lightermen. Take a cargo of 1,000 barrels of resin, in connection with the Merchants & Miners' Transportation Co. for a local concern in eastern Pennsylvania. We have placed the lighter for the thousand barrels, and when the lighter got there, there were only 910 barrels. We consequently had to go away with a shortage of 90 barrels. We did not say they lost the 90 barrels. It might come along in the next ship; it may not come along until two or three shipments. That is entirely a question of volume of freight and time to handle it.

We must all admit that voyages are lengthened or shortened by the degree of the weather. That, of course, compels the steamship company to do as I have said in their shipments. In trying to relieve this situation I asure you myself, as a common carrier I have done everything possible to facilitate the delivery of cargo intact, and within the last nine months we have not had any complaints for loss either in the shortage of shipment or in the tampering with the package. I assure you on the part of the carrier that we solicit anything that you can do in cooperation with the shipper or carrier to better protect these goods.

A great many have said here—I think there were one or two, and I think Mr. O'Connor mentioned this morning—that if they would make a rigid fine or a rigid penalty for the theft and pilferage of this material that it would no doubt go greatly to relieve the situation. We have that only in our criminal cases. We all know that the penalty for murder is death, but it still goes on, and although the penalty is imposed we still have murders.

If this committee can in any way at all out of the information derived from the various witnesses here come to some conclusion that will better the situation I am quite sure that the carriers would heartily cooperate. It has been stressed that if the carrier would take the entire responsibility and thereby increase his rate of freight to take care of the total loss of the package instead of relying entirely upon what our Congressman thinks is almost a dishonest act, the $100 liability in the Harter Act—let us see. We had our gentleman from the West that said he knew the shippers would be perfectly willing to accede to the increased cost of freight if they could be assured of the positive delivery and the lack of theft and pilferage. It is to be expressed here—the desire, I am quite sure, and the hearty support of the carrier—that if you can in your good judg-

ment see that an amendment to the Harter Act is going to be of material benefit to all concerned, and that the rate of freight can be increased so as to allow the carrier to assume the responsibility and the total liability for the loss—that is, of course, to be seen. As I said here—and others—competition, no doubt, would rule that situation. But it seems to be on the part of men that are engaged in the handling of such stuff that if they can pilfer or steal in any way at all that it is very easy and well enjoyed, but even in instances where the extra rate has been charged by some of the steamship companies you have heard one of their representatives say that the lock was broken and that even though bars or barriers had been put there by the carrier to protect that high-class freight they even got into it.

I know that every one of us are perfectly willing to do all that is possible to cooperate with the committee, and, withal, I do not see where it is going to relieve the insurance end of the thing whatever because if the carrier is going to protect himself by a rate—he has got to have protection, and I do not think a rate, which really takes the full liability under his present scrutiny over the cargo, whether it is common or high class, is going to continue.

The question was asked by the Congressman across the table whether the protection of high-class freight by an increased protection given by the steamship company did not also increase the protection to the common freight. I think so, because most generally those lockers are the part of the ship on which these cargoes are stolen, and are put into a position whereby to get access to the other cargo would be a little hard.

If the committee desires any figures in connection with certain losses that members of our association have sustained or paid, I will endeavor to have that compiled there and submit it to you at an early date; but at the present time I have not been furnished with it, and having had a conference with Mr. Joyce, who represents the lighterage department of the Central Railroad of New Jersey on this subject, he said that they have endeavored through the local interests of the port of New York to stop this matter and only employ two classes of detective agencies and two classes of policemen. The lighters have been molested in instances where the captain has been drugged in order to get him out of the way and the stuff has been taken by river thieves.

In fact, we have members of the association who operate tugboats and other tugboats have been tied up and have been boarded by river men who got onto the ship and took her out into the harbor to facilitate the moving of the lighter alongside the ship until they could take what they want and put her back. That has been done and the fireman and cook have been on board the boat, woke up and quited and kept so until the boat was sent back. We traced it up and found out who they were. It was impossible to put proof entirely on to them, but some of the goods have been confiscated and put back.

It is a far-fetched question and it is not something that the steamship company can control entirely, and it is not right that they should assume the full liability for something that occurs previous to their getting it or after delivery to the lighter, between delivery to the consignee.

Mr. EDMONDS. I do not think I said the limitation of liability contained in the bill of lading was a dishonest act.

Mr. BERNARD. The bill of lading?

Mr. EDMONDS. I did not say that. I said the fact that these people were stealing from this cargo was dishonest, and that we should not condone a dishonest act.

Mr. BERNARD. We do not want to hide, and I think the gentleman here who represented the claim department, in answer to a question from Mr. Herrick said that they did not want to pass the buck. I am pretty sure that every carrier will do all possible to locate, if it is within his power.

Mr. EDMONDS. I hope so.

Mr. BERNARD. I know that. I asked that I be given this chance to testify as I have been called home on some important matters. If the committee desires any figures that I can procure it will be willingly done. I will be glad to answer any questions.

Mr. LAWS. You just said that you did not think it was fair that the steamship company should be called upon to pay for losses that occurred prior to the time the goods got into the hands of the steamship or after they dock. That is reasonable?

Mr. BERNARD. Reasonable.

Mr. LAWS. Do you think it proper and fair for the steamship company to be responsible for the losses that occurred while the goods are in their possession?

Mr. BERNARD. If proof can be made against them that the pilfering has been done while the goods were in their hands they should afford the protection to the carrier that is proper and right. I have in my transportation body claims in settlements where it has been proven. I have not in recent years carried any whisky, but when we were carrying whisky there were at times losses which we could not find and on which we employed Pinkerton's men who went trip after trip on our boats, watched the men, and positively could find no evidence that it had been disturbed there. But it had been disturbed. The hoop had been loosened, and a gimlet hole bored, and it was drained out. The hole was covered with a piece of wood. It had been done by either the drayman or whoever brought it from the warehouse to the transportation company. We had the Pinkerton people come and they had a force of men who all changed their watches along with the watches of the men on the boats and there was no proof to be charged against the transportation company that they did pilfer.

Mr. LAWS. But it is not just to the steamship company to hold them if it is legally and competently proven that the theft or pilferage or nondelivery occurred while the goods were in the hands of a given transportation company, which should be held responsible for that. That is true, is it not?

Mr. BERNARD. I will be frank in not giving anything that the steamship companies should be covered on in the future, but we have as local transportation companies had cases where it has been proven that the cargo was tampered with by the crew of the vessel, and the full loss was paid by the transportation company. We had one clause in our bill of lading of an exemption of $100. With the local coastwise business, I will be frank in saying that Mr. Laws mentioned yesterday that the bill of lading was probably 8 by 6. We,

of course, in the local interests have carried considerable pig iron. In the early days a great many of the jumpers would stop those boats and the boat would be taken off down the river or anywhere in transit under cover of darkness, the harbor facilities being employed, and in that instance, of course, we paid our claim for the losses of material as weighed out We had no way of weighing that cargo into the boat hold. We took the shipper's count and shipper's weight. After that we made our freight rate to such an extent that we are not liable for any loss of that on board to be delivered unless proven that it was tampered with by the crew, and after one arrest or two arrests in a season that would obliterate any other cases during the year. But I think the carrier should have the benefit of the Harter Act in connection with the navigation of his vessel. As to the matter of limitation, that, in my mind, is a question whether you can increase that liability by an increased rate of freight and be a benefit either to the carrier or to the shipper.

STATEMENT OF MR. R. A. BRESEE, JR., NEW YORK PORT MANAGER, MUNSON STEAMSHIP LINE.

Mr. BRESEE. I am the New York port manager of the Munson Steamship Line. My position is very similar to that of Mr. Hanlon, who previously testified.

Mr. CAMPBELL. How many steamers does the Munson Line operate?

Mr. BRESEE. They own about 17 and operate various others, depending upon the state of business, up to over 100.

Mr. CAMPBELL. Are you an operator of Shipping Board vessels?

Mr. BRESEE. Yes, sir.

Mr. CAMPBELL. How many at the peak of your service have you had?

Mr. BRESEE. I can not answer that exactly; in the neighborhood of 70 to 80.

Mr. CAMPBELL. To what ports are you operating?

Mr. BRESEE. Cuba, Mexico, and South America chiefly.

Mr. CAMPBELL. Are you operating any Shipping Board vessels to these ports, any liners?

Mr. BRESEE. We are operating Shipping Board vessels to South America all the time.

Mr. CAMPBELL. To what ports in South America?

Mr. BRESEE. Rio, Montevideo, Buenos Aires, Santos—practically all.

Mr. CAMPBELL. Who has charge of that service—Mr. Knowles, of your company?

Mr. BRESEE. Mr. Knowles has charge of that service once it leaves New York.

Mr. CAMPBELL. Will he be here this afternoon?

Mr. BRESEE. We have sent for him.

Mr. CAMPBELL. Will you tell the committee just exactly what the situation is with your company at New York, so far as you know?

Mr. BRESEE. I shall be glad to. To begin with, when a truck load of freight is proffered for delivery, a man goes out and gives the driver a ticket for the number. That serves a double purpose. It gives him his place on the line and it is taken up when the truck comes into the dock. That is to guard against the possible collusion

between the driver and some checker who may be in our employ whereby the truck might not go down to the dock at all and the goods be receipted for. The goods go through the ordinary process of proceedings such as have been outlined by the other gentlemen who have testified, and checkers are assigned to check the merchandise, note its condition, etc. If the truck is empty when it leaves the dock, it is not challenged, of course. If it has any packages aboard, a pass is issued by the checker and that pass is taken up by the watchman at the gate after being countersigned by the dock boss or somebody in authority. That makes it necessary to have two names on every pass for a truck going out of the gate with packages aboard. That is to prevent the checker and driver from getting into collusion and the driver not delivering all his packages in the event that he picks up something on the pier. When goods are delivered by lighter they are checked or tallied in the usual manner, and in addition to that the lighter is inspected at the conclusion of its work to make sure that none of our cargo destined for our vessel has been left aboard either by inadvertence, carelessness of checking, collusion, or any other reason.

That is done by an independent individual, the idea being to have as many people involved as possible and to lessen the chance of collusion. The docks are protected as to watchmen adequately. The number of men on each pier each day depends entirely on the amount of cargo there, and whenever vessels are working and handling broachable cargo or where broachable cargo is already in the holds watchmen are placed in each and every hold.

We have a system of passes for individuals so that a person who is not known who does not carry a pass is not allowed down the dock. That, of course, is to keep out anybody who has no business there. We have a pass system whereby individuals are not allowed on the docks unless they are known or have a pass, in the event of their coming there for the first time. That is to keep unauthorized persons off the docks so that we know as well as we can know who is on our docks.

The precautions that I have outlined already apply on all classes of cargo. We have, similarly to the other lines, a list of so-called special cargoes which goes through an expert checking process because of its susceptibility to pilferage. This list will include boots and shoes, wearing apparel, dry goods, silks, which it is unnecessary to repeat, as it has been sufficiently given already, I think. Those cases are very carefully scrutinized for condition, and they are weighed upon being received. If the weight agrees with the weight on the receipt as declared by the shipper, that is all right. If it does not, the shipper's attention is immediately called to the discrepancy. These packages are kept together in one part of the dock, and the watchman posted to see that they are not touched while on the dock.

Mr. CAMPBELL. What system of watching do you use on your dock? Let us go into that.

Mr. BRESEE. Our watching is done by the agency system. We have not our own police force. We deem it best to stick to the agencies.

Mr. CAMPBELL. What do you mean by agencies?

Mr. BRESEE. For instance, William J. Burns Detective Agency is one of them.

Mr. CAMPBELL. Just what system do you maintain?

Mr. BRESEE. These agencies supply us with the watchmen that we require. They work on an 8-hour shift, midnight to 8, 8 to 4, 4 to midnight. Each of these shifts is supervised by a roundsman who makes his rounds and sees that the different men or individuals are on their posts and on their job.

Mr. LEHLBACH. You contract for that service with the agency and then they furnish these men?

Mr. BRESEE. Yes.

Mr. LEHLBACH. Has that worked satisfactorily?

Mr. BRESEE. It has.

Mr. LEHLBACH. Any losses on the docks?

Mr. BRESEE. We have had a few, but very few.

Mr. LEHLBACH. Do you hold the agency responsible in any way for losses?

Mr. BRESEE. We have been able to make a few collections for a few cases. There have not been many cases, but where we have a clear case against the agency we have found them willing to pay.

Mr. LEHLBACH. You mean where employees of the agency have themselves stolen goods?

Mr. BRESEE. No; I do not mean that. I mean where goods have been pilfered or broached while under supervision of the agency.

Mr. LEHLBACH. Are they supposed to insure the success of their service and pay if they are unsuccessful in preventing larceny?

Mr. BRESEE. They are under no definite agreement, but, as I say, in the very few cases we have had we have found them willing where it is a clear case against them.

Mr. CAMPBELL. How large is the crowd of watchmen maintained on your dock?

Mr. BRESEE. It depends entirely on the amount of cargo there. Take a small operation like on Pier 9 and Pier 10, East River, five hundred and odd feet long, we sometimes have five or six, and again only two or three or four. If we are full of cargo we will have five or six on each pier, and in addition to the watchmen in the holds of the ships when the ships are working, as I have explained.

Mr. CAMPBELL. What precaution is taken aboard ships during the voyage?

Mr. BRESEE. That is a little bit beyond the scope of my authority, Mr. Campbell. I can tell you what happens up to the time it goes aboard because that is in my department.

Mr. CAMPBELL. What do you do on board a vessel with the special cargo that pays a higher rate?

Mr. BRESEE. It does not pay a high rate. It gets this attention because of its nature.

Mr. CAMPBELL. What?

Mr. BRESEE. I was going along on that and I will continue if I may. I have already said that it has been weighed. Each case is given a serial number and we have forms on which the record is entered, and finally the cargo is weighed a second time when it is being loaded aboard the ship just at the time of loading, and the weight compared with the previous weight. It is then receipted for, usually by the mate of the steamer, under his supervision.

Mr. EDMONDS. He pursues the same checking system as the other lines.

Mr. BRESEE. There is very little difference from what I have heard testified.

Mr. EDMONDS. Is there any material difference in the system in vogue in your company and that which has been testified to by Mr. Hanlon, Mr. Guilford, and Mr. Imlay, in respect to their companies?

Mr. BRESEE. I see no important variation.

Mr. EDMONDS. What is it you are not doing that you can physically do to give better care and custody of that cargo?

Mr. BRESEE. I can think of nothing. I am sure if there was anything we could think of or that anybody could suggest to us we should do it.

Mr. CAMPBELL. What is your observation as to whether thefts are decreasing or increasing with the change of labor conditions which has been testified to?

Mr. BRESEE. We have so few on our piers and have had so few for the last several years I do not think that can come within the scope of my jurisdiction either. The answer is we do not have many; we have next to none. Perhaps I do not express myself clearly.

Mr. EDMONDS. You do not know anything about the operation of claims in regard to the delivery of freight at the other end?

Mr. BRESEE. No, sir; not in detail.

Mr. EDMONDS. How about your incoming freight?

Mr. BRESEE. The incoming freight is handled in a very similar manner, watchmen posted in the holds, the condition noted when the goods get on dock, and then they come under the supervision of the same class of watchmen, and receipts are taken as the property is delivered.

Mr. CAMPBELL. That is all I care to ask. It is cumulative very largely.

STATEMENT OF MR. J. N. SENECAL, AMERICAN STEAMSHIP OWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (INC.).

Mr. LOINES. Are you a member of the legal staff of the Association of American Steamship Owners?

Mr. SENECAL. Yes, sir.

Mr. LOINES. You have charge of the claims for shortages in cargoes that occur in New York?

Mr. SENECAL. Yes, sir.

Mr. LOINES. Will you please present to the committee the brief analysis you have made of the shortage situation and then give such instances as you can of the conditions here?

Mr. SENECAL. Yes, sir. For the past year and a half I have had charge of a large number of shortage and pilferage claims to and in and around the port of New York. In most cases I have conducted an investigation to determine, if possible, where the pilferage or shortage occurred first; second, who committed the act; and third, to endeavor, if possible to bring the guilty parties to trial and conviction. An examination of most of these claims shows that you can divide the subject into three main divisions—first, the pilferage and petty thieving which is committed by longshoremen during the loading and discharge of a vessel and while the merchandise is

stored on the pier, and stealing by river thieves and shenangoes while the merchandise is stored on the pier, stealing by members of the crew while the vessel is on the high seas or during the loading and discharging.

There is a second class of shortages and pilferages brought about probably by a conspiracy between the lightermen or truck drivers and steamship checkers, also a large number of cases of mysterious disappearance of packages, probably brought about by a similar conspiracy. There are a large number of other claims that we know and speak of as concealed losses or substituted losses, and these are, in my opinion, invariably caused by truck men. Cases will turn out at destination apparently untampered with, contents apparently O. K., and when the case is opened it will be found that ashes or other substances have been substituted for the original contents. Quite recently we were presented with a claim for cases of condensed milk which were outturning in France. When the cases were opened they were found to contain ashes. We started an investigation at this end and solicited the cooperation of the manufacturer. He caused a search to be made on the records of men employed in their shipping department, and found in most of the lockers a large number of tins of milk.

Another quite recent case is a case where a policeman on the Brooklyn water front observed an automobile acting rather suspiciously. He spoke to the man, searched the back seat of the car, and found a bag containing a large number of shoes. Each shoe had the factory number on it and upon communicating with the factory they advised us that these shoes were supposed to be in a case which was then in the possession of the steamship company. I attended at the pier of the steamship company with a representative of the insurance company and a representative of the shipper and we surveyed the case. Nobody was able to see where the case had been in any way tampered with. The case was opened and found that each pair of shoes had been extracted and in place a small piece of wood placed in each box. The case was further investigated and it was found that the case had been in the possession of the truck driver over night and, subsequently, a conviction was obtained against the truck driver and two of his conspirators.

One way in which the shipper can cooperate if they will is by making all deliveries to the truck drivers on the morning of each day, thus insuring delivery to the steamship company on the same day and avoid the possibility of this case remaining on the truck over night.

The American shipper can also improve the standard of his package and in all cases of valuable cargo the cases should be strapped or wired, or both. The exporter can by eliminating his trade-mark from the goods aid the steamship company. Some of the trade-marks are so well known that a sailor or a longshoreman knows at once what is contained in the case.

As a brief illustration of what some of these thieves will do, a case occurred on the piers of New York City on Columbus Day; about 5 o'clock in the afternoon of that day a truck drove past the watchman on a Brooklyn pier and proceeded to load some seven drums of grain alcohol which were then stored on the pier. The watchman at once put in an alarm; the detective force responded and

apprehended the men. During the course of this one of the thieves was shot. Upon the trial of these men it was testified that one drum of grain alcohol at the present time, if properly diluted and colored, was worth about $7,000 over the various bars in the city.

Another large theft which occurred in the port of New York is a theft of the entire lighter containing grain alcohol. The lighter was stolen away from the pier and later found abandoned in the harbor of New York. So far as known nobody has ever been apprehended for that act.

Mr. EDMONDS. The lighter disappeared?

Mr. SENECAL. The lighter disappeared. The lighter has been found subsequently. When this pilferage wave was at its height about a year ago the customs authorities in New York City were large losers. It seems that cases of general merchandise are in a number of instances sent to public stores for the purposes of appraisal. These cases are segregated on the pier under the control of the customs guard and various public store trucks sent from bonded warehouses to pick up these cases and remove them to the warehouses. During the last winter a number of truck men in some way obtained a license of one of the public store trucks and in that way made away with a large quantity of merchandise variously estimated at as high as one-half a million dollars.

Quite recently a representative of one of the underwriters called upon me for aid in investigating a concealed loss consisting of several cases of stockings which, when opened in the customhouse, was found to contain nothing but ashes. He mentioned in passing over this claim that he had similar claims from the same shipper during the last year aggregating about $100,000.

On behalf of this association we have endeavored in all cases to secure convictions, preferring whenever possible to bring in an action in the Federal court under the act of February, 1913, making it a crime to steal from interstate and foreign shipments. This act was originally intended to apply probably only to rail shipments, but its terms were broad enough to permit the starting of these actions for stealing on piers and on ships within the 3-mile limit.

Mr. EDMONDS. Did you bring these actions in the United States court?

Mr. SENECAL. Yes, sir.

Mr. EDMONDS. Then, of course, the ship is covered by the other sections, so you could bring the stealing on the ship in the United States court also.

Mr. SENECAL. Anything stolen on the high seas; yes, sir. The difficulty with this section is that the first requisite is to prove that the goods stolen were part of an interstate or foreign shipment, and in order to do that they have got to be fully and completely identified; and when a man is found with a pair of stockings in his possession, or a bolt of silk, without any trade-mark, it is practically impossible in all cases—it is practically impossible in court—to hold him or to get any jury to convict him. Another thing in the Federal courts is that there is no provision for petty larceny. If you steal $1 worth it is as much a crime as to steal a million dollars' worth, and as a conviction by a Federal jury seems to take away the privileges of citizenship juries are quite reluctant to convict in small cases, principally

because of this reason. In a large number of cases—for instance, transshipments moving through this country to Cuba—there will be nobody in this country who can testify that they packed in this case the same goods which were later found in the possession of the longshoreman or some other third person, and these cases have failed.

It would seem possible to amend that statute to make a distinction between petty and grand larceny and to so give the United States commissioner the power to try and convict men under indictment for petty larceny. At the present time all cases have to be before a Federal judge or district judge. If he has power to sentence them for a certain number of years in a large number of similar cases one conviction which has occurred would stop this evil more than anything else.

Mr. EDMONDS. Have you any record of men stealing on the high seas?

Mr. SENECAL. Yes, sir; I have such a case.

Mr. EDMONDS. Did you arrest the sailor?

Mr. SENECAL. The sailors are arrested, and indicted by the grand jury, and when they happen to be foreigners the bail was reduced to $100 and the bail has been forfeited in each case.

Mr. EDMONDS. Is that in the Federal court?

Mr. SENECAL. The Federal court.

Mr. EDMONDS. It seems to me that is evidence of a miscarriage of justice, when the penalty is 10 years in prison and $10,000 fine.

Mr. SENECAL. I have two such cases, and in one of them eight men were arrested. Bail in each and every case was forfeited, and in the other case they have not been brought under trial.

Mr. EDMONDS. I should say that district judge was very derelict in his duty to make such a fine in such a case.

Mr. SENECAL. The fine was not $100; the bail was made $100.

Mr. EDMONDS. I mean bail.

Mr. LEHLBACH. Is that before the United States commissioner? Is the bail fixed by the commissioner?

Mr. SENECAL. Yes.

Mr. EDMONDS. It is fixed by the grand jury?

Mr. SENECAL. The grand jury does not fix the bail.

Mr. EDMONDS. The court does it.

Mr. LEHLBACH. The commissioner fixes the bail.

Mr. SENECAL. The commissioner fixes the bail. After the grand jury indicts we arrange that.

Mr. EDMONDS. Then, I should say the commissioner was very derelict in his duty.

Mr. SENECAL. At the present time pilferage is on the decrease and, in my opinion, is mostly an aftermath of the war. As an example of that, about a month ago I was on a pier in the city of New York, and some stevedores were observed smashing a case, allowing it to drop heavily so that it would break. The attention of the boss foreman was called to this. Without any hesitation he walked up and—biff, biff—he discharged those men. A year ago there was no foreman in the port of New York who would have dared to do such a thing, because it would have meant that the men would have walked out, and when he went home that night two or three bricks would have followed him.

Mr. LOINES. Would that have been possible during the war—for him to have discharged those men?

Mr. SENECAL. It was; yes, sir, in my opinion.

Mr. EDMONDS. You are a solicitor of the Protection and Indemnity Association?

Mr. SENECAL. Yes, sir.

Mr. EDMONDS. The Shipping Board is among your clients, are they?

Mr. SENECAL. Yes, sir.

Mr. EDMONDS. Have you taken steps to investigate these losses?

Mr. SENECAL. I have been investigating these claims, as I say, with the idea, first, of finding out whether they occurred; second, who did it; and then trying to convict these men.

Mr. EDMONDS. Do you take advantage of all the terms of the bill of lading in refusing claims?

Mr. SENECAL. No, sir.

Mr. EDMONDS. These cases were brought to our attention a short time ago—10 or 12 cases, which seemed to come from your association—in which you refused to pay them, on the basis that claim was not made within the time limit.

Mr. SENECAL. I have no personal knowledge of any such claims.

Mr. EDMONDS. I think that was true of some claims that were mentioned here.

Mr. AMBERG. For the sake of the record, it ought to appear that the Protection and Indemnity does very commonly waive this notice provision; but it seems unfair to us that when a certain claim comes along they should have the opportunity of becoming judges and availing themselves of this notice of claim and refuse to pay it on the ground that the claim was not filed in time, and therefore the claimant has no further redress.

Mr. EDMONDS. Sometimes they do waive it?

Mr. AMBERG. They do very commonly. The Protection and Indemnity is very liberal in waiving that notice of claim, but nevertheless that does not change the fact that in our opinion it is wrong and the notice is unreasonable—for instance, that notice should be given at the time of removal from the dock.

Mr. EDMONDS. Do the regular insurance companies take that same advantage of the failure of notice or do they not have that in their policy?

Mr. AMBERG. They do have that. That question comes up in marine policies, the question of notice of loss, and the courts have held that failure to give notice of loss which is called for vitiates the policy. It is a condition preceding liability, and under certain conditions insurance companies do take advantage of it. There is no question about that. It generally calls for prompt notice under the circumstances.

Mr. EDMONDS. But actually the rules of the Protection and Indemnity Association are along the same lines as those of the insurance companies.

Mr. AMBERG. Except that some of the provisions as to notice of loss are too strict and can not, as a practical matter, be complied with.

Mr. LOINES. Mr. Senecal, will you tell the committee what some of the underwriters or shippers have been doing recently for the

prevention of pilferage, and the attitude of some of the express companies at the present time toward the pilferage question?

Mr. SENECAL. Yes. I attended last winter a series of conferences brought about by a detective agency at the port of New York for the purpose of combining shippers and carriers, in an effort to reduce pilferages. During the course of those meetings, what I gathered to be the consensus of opinion of the shipper was that he wanted to have his case turn out at destination complete. as there was no profit in having part of the case turn out, and in having a claim against the steamship company. That is the same thing that the steamship company wants.

During one of these conferences one of the express company representatives spoke, saying that they had probably been the big sufferers from pilferage during the past two or three years. He gave the amount of his loss and how hard it was to trace the various pilferages. He stated that in his opinion the pilferage evil was solving itself; that their losses were continually going down.

Mr. EDMONDS. You have no figures to prove that it is going down, though?

Mr. SENECAL. I believe he has.

Mr. EDMONDS. Have you got them with you?

Mr. SENECAL. I am not from the express company.

Mr. EDMONDS. I mean your figures.

Mr. SENECAL. No; I haven't any figures, but I know of his figures.

Mr. EDMONDS. And you think they have rather let up now, probably because it is hot weather and they do not want to work so hard?

Mr. SENECAL. No, sir; but I have seen a large number of these claims, and I have seen them gradually falling off. I will say this, I think these concealed losses, losses that do not occur while the cases are in the custody of the steamship companies—I think they are on the increase. I have had more of these cases brought to my attention recently.

Mr. EDMONDS. That is left all in the hands of the truck driver?

Mr. SENECAL. Or with the shipper, or any place. I examined a case only yesterday that was supposed to contain revolvers. Every revolver had been taken out and other stuff substituted, yet outwardly the case appeared to be in No. 1 condition. Suspicion was directed to it because of the fact that it happened to be some 15 pounds under weight. It is very rarely that these truckmen when they substitute contents fail to make up the proper weight.

Mr. LOINES. Was that an export case being delivered by a truckman to the steamship company?

Mr. SENECAL. Yes, sir.

Mr. LOINES. And the shortage of weight was detected by the steamship company immediately after delivery?

Mr. SENECAL. Right after delivery.

Mr. EDMONDS. Would not the continuous weighing of packages at the piers, to see whether the weights correspond, help a great deal?

Mr. SENECAL. No, sir. This is the first case of substitution I have found where the weight varied 1 ounce. We had a case some time ago, a transshipment of merchandise from Liverpool to Cuba, where the case came out of a junk shop and the policeman arrested the driver. The case was taken over to the police department. We

weighed that case and it weighed to within an ounce of what the outside of the case showed it should weigh; yet woolens had been taken out; rocks, iron, and waste had been substituted.

Mr. EDMONDS. Well, when you take a large case like that, of course, a man must have a pretty fair-sized scale to take care of it. Truck drivers, as a general thing, do not have a scale of that size around the place.

Mr. LOINES. You do not know the truck drivers. You do not know how well they are organized.

Mr. EDMONDS. Unless he wants to do this kind of business.

Mr. LOINES. He does want to do this kind of business, and he is well organized to do it. He is a tool in the hands of a lot of fences. These things that he steals go to the fence.

Will you tell the committee something about the fences, Mr. Senecal? You are in touch with that situation.

Mr. SENECAL. Yes; the fences in New York have been doing business for 15 years. There is one along the Brooklyn water front who openly boasts that he is in this business and defies anybody to convict him. Nobody ever has. They have convicted his lieutenants.

There is a fence in the lower part of New York City on Morris Street, a junk shop there—and the object in having a junk shop at that place seems to be to meet these trucks which come down from the west side carrying freight on the way to Brooklyn, across the ferry there. These fences have been watched by the police department and they have never been convicted in New York City. The police know they are there, but they do not seem to be able to convict them.

Mr. EDMONDS. What do you do when you find that the police can not convict them; do you just give it up?

Mr. SENECAL. We do not; no, sir. I have wandered around the piers at night and other people have, too, looking for these things.

Mr. EDMONDS. But do you not endeavor to find some way to break it up?

Mr. LOINES. Tell about the employment of detectives by us to do that.

Mr. SENECAL. We have employed—whenever an unusual case came in we have at once gone out and employed detective agencies, using all manner of detective agencies, one detective agency being better on a certain type of case than another, and quite naturally these detective agencies do not work for nothing.

Mr. EDMONDS. You know this fence is in Morris Street?

Mr. SENECAL. I know where he is; yes.

Mr. EDMONDS. Can you not have a man around there—employ detectives for a week or two in order to get him?

Mr. SENECAL. We have done that, but during that period nothing happened.

The junk dealers have an association, and if you arrest one of them you can not keep him in jail over two minutes. His bondsman will be there and his lawyer will be there, just like that. They have been doing business, not alone on the water front, but they have been stealing from the rail cars; they have stolen from everybody.

Mr. EDMONDS. You have the Federal law there, too.

Mr. SENECAL. And every now and then one is convicted.

Mr. EDMONDS. Do you try them under the Federal law?

Mr. SENECAL. In every case; yes, sir; I bring my indictment under the Federal law.

Mr. EDMONDS. What happens when you get one of these junk dealers up?

Mr. SENECAL. We have never had a good case against any of the junk dealers.

Mr. LOINES. What is the difficulty in convicting the junk dealer? Explain that.

Mr. SENECAL. Well, you take any number of cases: you can search the junk shop and you will not find the stolen goods, yet you know they have been stolen. Then, the second thing you always run up against, is the question of identity. I come into court with a dozen silk stockings, and I say they were stolen from a case moving from New York to Hamburg; the defendant appears in court, with his attorney, and he brings in two dozen other silk stockings of the same kind, and he says, "What proof is there that my man did not go out and buy these stockings?" Anybody can buy these stockings. The mere fact that stockings are found there does not prove that they are stolen. It is the hardest thing in the world to convict on. You can convict a man for murder on circumstantial evidence, but it does not seem possible to do it in the case of receiving stolen goods.

Mr. EDMONDS. Have you ever tried putting your own driver on the truck delivering stolen goods, and try to see whether you could get them that way?

Mr. SENECAL. That has been tried.

Mr. EDMONDS. Doesn't that work, either?

Mr. SENECAL. No, sir; it does not work.

Mr. EDMONDS. The junk dealers have got everything their own way in New York, have they?

Mr. SENECAL. Well, they have been doing business there since before I was born, and they probably will be doing business when I am dead.

Mr. EDMONDS. It seems to me that a shipowners' organization such as you have ought to be able to handle a small man like a junk dealer.

Mr. SENECAL. They are not small men. A man who has been a fence for any length of time is not a poor man by any means. He is driving around in his car; and it is not the man who steals who makes the profit out of these pilferages. The truck driver, the man who takes a big chance, gets a $10 bill or $20 bill, but the fence who takes his merchandise and sells it up in Bridgeport at night, or sells it there the next day or in Philadelphia the next day, makes the money out of it.

Mr. EDMONDS. How long has your organization been in existence?

Mr. SENECAL. Since 1917, I believe.

Mr. EDMONDS. Have you any record at all of the increase in crime that you have encountered, due to which claims have been made against the steamship companies in the past 5 or 10 years?

Mr. SENECAL. They have not been in existence over 5 years. I have only been there a year and a half myself.

Mr. EDMONDS. Do you think there has been an increase in this loss due to disorganization?

Mr. SENECAL. In what respect?

Mr. EDMONDS. The disorganization of sailors, taking things into their own hands?

Mr. SENECAL. There can be no doubt about the fact that the sailors have been very unruly, very hard to discipline since the war.

Mr. EDMONDS. Has it led to any increase in the crime that has been committed by sailors?

Mr. SENECAL. I think so. But the proportion of pilferage which is committed by the sailor is very small. He does not have an opportunity.

Mr. EDMONDS. It is not so very small when one time they took a whole ship and kept it for three months.

Mr. SENECAL. No, sir.

Mr. EDMONDS. That runs up pretty high, when the sailor can take a whole ship and run away with it.

Mr. SENECAL. Yes, sir; it does.

Mr. LAWS. Mr. Senecal, you said that you thought pilferage was on the decrease recently?

Mr. SENECAL. Yes, sir.

Mr. LAWS. By what do you judge that?

Mr. SENECAL. By the number of claims which I have seen.

Mr. LAWS. Do you see all the claims; is that part of your jurisdiction?

Mr. SENECAL. I see a large number of pilferage claims occurring in the port of New York—not all of them; no.

Mr. LAWS. And from whom do those claims come?

Mr. SENECAL. They come from various members of our association.

Mr. LAWS. From various members of your own association?

Mr. SENECAL. Yes, sir.

Mr. LAWS. That does not take into account, I presume, the large number of claims that are presented by shippers first to their consul and turned down, and nothing further is done with them, because they can not recover under the limitations?

Mr. SENECAL. Well, because they can not recover under the limitations—my experience has been that this limitation affects very few claims. It is only going to affect general merchandise in the first place, and it is most liable to affect silk, leather, stockings, and things like that. Now, silk comes under section 4281 of the Revised Statutes.

Mr. LAWS. Well, if I say to you that claims that are in the hands of counsel, marine counsel, cover all classes of stuff that is subject to theft and are being turned down every day, not one but dozens of them every day, and the clients are advised that they can not recover, would that make any difference in your mind to account in any way for the fact that you do not see as many now as before?

Mr. SENECAL. No; it would not account for it at all; because I am out on the piers usually every day and I know what is happening there, and I know that pilferage at the present time—you can just go on the pier and see the difference in the discipline and in the way things are being handled now, and there is no doubt about the fact that it is now on the decrease.

Mr. LAWS. I just wanted to get your view about it.

Mr. SENECAL. That is my view.

Mr. CAMPBELL. That is all, Mr. Senecal. That concludes with the men that I have from New York who will testify as to the watchman service, excepting that a representative of Mr. Bull's line is on his way here, and Mr. Noel for the Munson Line, who knows of the South American situation, and I think the committee should hear him, because it is a most deplorable condition that exists down there, and I think you ought to have knowledge of it, and I want to go into the case of the Bull Line just briefly on some of these things that we have touched upon.

I am going to ask one of the rate men, Mr. Ryan, to talk to you briefly on the question of ad valorem rates. Before he touches that, however, Capt. Blake is here from the port of Baltimore, representing the Steamship Operators' Association, an association which is composed of the operators of Shipping Board vessels, I believe, and I think that the committee ought to hear from the port of Baltimore as to what the conditions are there, briefly. Captain, will you make it as brief as you can?

STATEMENT OF MR. W. A. BLAKE, BALTIMORE, MD.

Mr. BLAKE. We have not the same condition in Baltimore, of course, that there is in New York with truckage and hauling. We accept freight direct from the railroad, direct from the railroad docks. We have no public piers. The terminals are also controlled by the railroads.

The exceptions are all noted on our receipts to the railroad company. The pilferage that we have, the stealing, amounts to very little with us. Some has been carried on by stevedores, and some little by the crew, the riffraff that we have had in the last two years, but that is all being weeded out, due to better discipline among the crew and also among the stevedores handling the cargo. I do not think the amount of pilferage we have will amount to enough to be worth speaking of.

Mr. CAMPBELL. What system of watching do you maintain on Shipping Board vessels?

Mr. BLAKE. Well, of course, the railroad is liable as long as it is on the wharf. As soon as we take it from the ship's side we have a day watchman and a night watchman at the gangway of the ship who takes care of anyone leaving with parcels and investigates them. During noon hours checkers who are receiving the cargo from the railroad are kept in the ship's hold for half an hour while the other half eats, and then the others come back and relieve them while they eat. So it leaves a watch on each one of the holds while the cargo is being handled.

When they knock off at night the hatches are put on and battened down and covered with tarpaulin, and they remain that way until morning. There is very little chance of any pilferage at all in a ship, other than what happens when a case of liquor is broken open in the hold and some fellow drinks it. He can not carry it ashore, but he can drink it, and we have to put in an account for it.

Mr. CAMPBELL. Where are you operating your steamers?

Mr. BLAKE. To the United Kingdom and transatlantic.

Mr. CAMPBELL. What has been your experience with the volume of theft and pilferage losses?

Mr. BLAKE. What do you mean, as to amount?

Mr. CAMPBELL. Yes; either number of claims or amount, in that trade. Have they been large?

Mr. BLAKE. They have been exceedingly small, from our experience, the claims that we have had. If I had known that I was coming here, I could have given you some accurate figures as to the amount of claims that have been handled in the last two years. I think Mr. Bull has that figured out for his company.

Mr. CAMPBELL. What is your observation as to whether these claims are on the increase or decrease?

Mr. BLAKE. Well, they can not help but be anything but on the decrease.

Mr. CAMPBELL. Why?

Mr. BLAKE. Well, the discharge of the army practically left the scum of the country on this Atlantic coast, and we have had to contend with that element in stevedores and men to man the ships, but that is being weeded out all the time. You can discharge a man now without all hands quitting.

Mr. CAMPBELL. Could you not do that before?

Mr. BLAKE. No; it was impossible. If you discharged one of the crew, the whole shooting match would walk ashore, and then it was impossible to man the ship out of that particular union. If we discharged one of the sailors, not only the sailors but the firemen, the engineers, and oilers, and everyone else connected with the ship would walk ashore.

Mr. EDMONDS. If you discharged a sailor for stealing, would the rest of them go out?

Mr. BLAKE. If you discharged a sailor for anything at all, they would leave.

Mr. EDMONDS. If you arrested him for stealing, would they all get off the ship?

Mr. BLAKE. Yes. We have arrested men for walking off with some Shipping Board property, and the judge discharged him.

Mr. EDMONDS. And the Shipping Board ordered the crew back on again, did they?

Mr. BLAKE. Well, the Shipping Board put their troubles up to us, so far as manning the crew goes—manning the ship.

Mr. LISSNER. In the instance that Mr. Edmonds elicited, where you had a man arrested—one of the crew—and he was discharged by the court, did the rest of the crew leave the ship because of the arrest of this man?

Mr. BLAKE. In this particular case they took some bed linen—ticking that goes in the firemen's quarters—and the man was caught in the act of walking ashore with it. When it came to prosecute him the court figured that it was a minor proposition; that the man was ignorant and did not know that this property did not belong to him. Most all Shipping Board property belonged to whoever wanted it.

Mr. LISSNER. What I have tried to find out and what I have asked is, Did the rest of the crew refuse to serve on the ship because this man was arrested?

Mr. BLAKE. No, sir; not in this case.

Mr. CAMPBELL. Do you mean to say that a condition ever existed when the United States Government did not dare to discharge a sailor who refused to obey orders?

Mr. BLAKE. Yes, sir; it existed, and it existed up until the first of this year. Not only that, the stevedores also—we have had as high as five gangs of stevedores on one ship in one day, due to discharging some one of the members.

Mr. EDMONDS. Then you really have no pilferage to speak of. Are all your cargoes billed through in good shape?

Mr. BLAKE. We have some little of it, but the percentage is very small.

Mr. EDMONDS. Nothing like it is in New York?

Mr. BLAKE. No; it is nothing like it is in New York. While one witness said, I believe, that the percentage of pilferage from a point in Chicago to a point in Europe may amount to practically the same, we do not have that condition at all. We receipt for the goods from the railroad, from alongside of the ship, which is different from where you have to haul it or cart it.

Mr. EDMONDS. Then of course the railroad is liable up to the time of delivery.

Mr. BLAKE. We give the railroad a receipt and make exceptions of anything that is out of order.

Mr. EDMONDS. You are very fortunate in that respect, I suppose, because there is no intermediary there to make you trouble.

Mr. BLAKE. Yes, sir.

Mr. EDMONDS. How about your hauled freight into the pier? Do you have much trouble with that, where you receive from local points?

Mr. BLAKE. We would not get 10 tons of local freight in a year, other than is delivered on lighters, or some little cargo that we receive that is delivered on lighters. We only receipt from the side of the ship, from the lighter.

Mr. EDMONDS. You do not receive freight on your piers?

Mr. BLAKE. No freight accumulates on the pier except at the directions of the railroads, which they are responsible for until they make delivery.

Mr. EDMONDS. You load at the railroad pier, then?

Mr. BLAKE. Yes, sir.

Mr. EDMONDS. Is that true of everybody in Baltimore?

Mr. BLAKE. It is true of all the shipping companies; yes, sir.

Mr. EDMONDS. I presume you have had the same troubles, more or less, that they have had in New York?

Mr. BLAKE. We have had some pilferage, especially of milk and canned meats and bread, but the percentage is very, very small. We never had any contention, and I do not think we have got a claim at the present time that is not paid.

Mr. EDMONDS. What kind of cargo do you handle; package cargo?

Mr. BLAKE. General cargo; anything that comes along from a pound of biscuit up.

Mr. EDMONDS. That all comes in by rail?

Mr. BLAKE. It all comes in by rail, with the exception of some little crushed oyster shells. That is practically the only local freight that we get—something of that sort. Everything comes in by rail.

Mr. EDMONDS. Now, have you anything more, Captain?

Mr. BLAKE. No, sir.

Mr. EDMONDS. Gentlemen, have you any questions to ask?

Mr. LAWS. That is a pretty good report, I think.

Mr. EDMONDS. Yes; I wish our Philadelphians would advertise Philadelphia as well as the captain is advertising Baltimore.

Thank you very much, Captain. Now, whom will you have next, Mr. Campbell?

Mr. CAMPBELL. I should like to have the committee hear Mr. Ryan on the question of ad valorem rates.

STATEMENT OF MR. F. A. RYAN, ASSISTANT FREIGHT TRAFFIC MANAGER, I. & M. CO. LINES, NEW YORK CITY, REPRESENTING THE INTERNATIONAL MERCANTILE MARINE CO.

Mr. RYAN. Mr. Chairman and gentlemen, I have spent my whole business life of over a quarter of a century in the freight department of the I. & M. Co., and I suppose I am a horrible example of the picture that was painted of steamship men before the hearing yesterday.

Before getting down to explain the rate-making system I want to say that I consider it a sound and good business principle for every concern to limit its liability. I think I can safely say there is not a man in this room that does not limit his liability in some way or other, either his automobile insurance or the liability of servants. The courts, in upholding the $100 limitation, evidently had in mind the soundness of the principle, and the insurance companies themselves adopt the same principle through their system of reinsurance.

It has been argued by several here that by increasing the rates it will not be a detriment or a hardship on the steamship carrier—that is, increasing the rates to compensate them for the extra liability in the event of the wiping out of the $100 limitation; but let me outline for you how that possibly will work as a serious disadvantage to our mercantile marine fleet.

I think if the gentlemen that are advocating that change have in mind that for the present increasing the freight rates will compensate for the additional risk they will find that in a very short time through competition that that additional advantage of compensation will entirely disappear, and we will then be on the same basis that we are to-day. I think quite possibly that might work out that way. You have as a competitor of the mercantile fleet, and a very keen one, all of the Canadian lines, and it does not by any means follow that if the Harter Act is changed the Canadian Government will make a like change in their water carriage act. Already the Canadian lines have a tremendous advantage in the inland rate situation, and I may say it is a very grave struggle for us here in the North Atlantic ports to compete on a favorable basis with the Canadian lines. Therefore to add further burdens would only tend to put American steamers out of the running.

I think it is safe to say that the bill-of-lading limitation to the continent and to Europe fully cover between 80 and 90 per cent of the commodities that are shipped, and the remainder would be fine goods, which should pay a higher rate and should be covered by insurance.

In making up freight rates there are three or four elements that are carefully considered. First of all we must consider the cost

of operation; second, the value of the goods, the weights, and measurements of the goods are also considered; third, we have brought to our minds frequently the foreign competition which a shipper has to meet, and for his protection and our own frequently we eliminate as far as possible the first two features, namely, operating costs, valuation, and so on, and try and place the merchant on a basis whereby he can compete with the foreign buyer. Now, it is obvious that if you are going to increase the cost of operation you make it more difficult for the rate-making bodies to bring in that human element of trying to put him on a basis whereby he can compete with the foreigner.

It is my understanding that the chairman of this committee early in the hearing stated that he would prefer not to have the remarks of any of the shippers challenged, but would rather have those who disagreed make their statement when they came on the stand. I take it that it is my privilege to comment on some of those remarks that have gone before.

Mr. Laws made the statement that it was a part of the rate-making consideration, in the sense that any line would name an ad valorem rate or a rate based upon value. I want to emphatically state that so far as the Continental and U. K. lines are concerned—in any case, I will say our own line positively—that he is entirely wrong in that respect. We always have been ready to fix a rate based upon value and show the value on the bill of lading, which automatically carries full responsibility to the carrier for the value shown.

Mr. EDMONDS. Those are not published rates: they are special rates, are they not?

Mr. RYAN. Well, you can not publish a list of rates on that basis, because in fact we do not give that discretion to anybody but our own office, our main office in New York.

Mr. EDMONDS. Is it hard for a shipper of cargo to get those rates?

Mr. RYAN. No; we could give them, but we would want to know what the conditions were, what the values were, and what the goods were; and we could make a rate then that would be reasonable both to the shipper and to the carrier.

Mr. EDMONDS. In making that rate you would accept full responsibility?

Mr. RYAN. We would have to, because the value would be shown on the face of the bill of lading.

Mr. EDMONDS. You would remove the limitation?

Mr. RYAN. It would automatically do so.

Mr. Price made a statement which I think is rather misleading to your committee, because it left the impression—I think he stated that flour shipments were frequently left behind, that they did not go on the steamer for which they were intended. Now, in the Continental and the European trades, flour is not booked for a specific shipment. It is the practice of the trade to make an engagement for a specified west monthly shipment. For example, booking may be made for 100 cars west. That means that the steamship companies, knowing the difficulty of the shipper in getting stuff to the seaboard in time for any specific steamer, they give them that free latitude to get the stuff out from the West in the time over which he has control, and we undertake to make it convenient for him in that way, and move the

stuff as promptly after arrival as possible. Flour is not booked for a specific steamer, and I think I am safe in saying that there has recently at least been no time when flour has been waiting, or any other commodity, at the seaboard because of lack of tonnage.

We have heard several men here express the opinion that this condition that we are going through to-day is world-wide. I think that is an absolute fact. I think we are suffering from the result of demoralization in every line of business and in every organization. We in our own organization are continuously prodding our own people to keep on their toes. We have drifted back in the last five or six years into a state where people do not seem to have the interest that they should, and I think that in time—and it is borne out by the statements of those before me—that these pilferages will diminish, and I think that in time the situation will automatically and gradually remedy itself. But to impose a loss on the carrier will not correct the situation; it will not act as a prod for the steamship carriers to employ more care; they are doing that now and they need no prod, because of the losses that they have sustained and for which they are liable is in itself a sufficient prod.

Something was said also about giving an "on-board" bill of lading. That question was very thoroughly gone over by special committees appointed, which held hearings with the bankers and the steamship lines in New York a short time ago.

Mr. CAMPBELL. Just explain to the committee what you mean by an "on board" bill of lading. I question whether they really know what you mean by that expression.

Mr. RYAN. It was mentioned by one of the gentlemen here and it is in the evidence, that recommendation should be made that an on-board bill of lading should be issued by the lines, instead of the present form which reads "Received in apparent good order for shipment."

Mr. CAMPBELL. That is what I wanted to get.

Mr. RYAN. And at that time, after carefully going over all the conditions, the bankers, whom I think you will agree are mostly interested, recognized that it would be a spoke in the wheel—that it would be a clog to attempt to enforce anything of this kind, because steamship lines could not give an on-board bill of lading until their docks had been cleaned up, or practically the very last hour or two before the sailing of the steamer, to make absolutely sure of everything being on board. We made a special arrangement with them to cover that feature, showing a desire to cooperate with them, to the effect that if there were any banking conditions which stipulated that an on-board bill of lading had to be given, that every line—I will say practically every line represented in the conference, which included all the important lines—would indorse across the face of a bill of lading that the goods were actually on board or were not actually on board, as the case might have been at the last moment. In that way it did not prevent the rank and file of the shippers from getting their bills of lading immediately the stuff was delivered to the steamer.

Steamer bills of lading are issued four or five or six days before a steamer sails and before the stuff is put on board, enabling a shipper to negotiate his documents and get his money, and not lose interest for five or six days, which is a very important thing.

Mr. EDMONDS. There has not been very much trouble occasioned by that, I imagine?

Mr. RYAN. No.

Mr. EDMONDS. As a matter of fact, I should rather think it was an advantage to the shipper.

Mr. CAMPBELL. It is a very big question, Mr. Edmonds, in New York with the bankers.

Mr. EDMONDS. Do the bankers demand an on-board bill of lading?

Mr. CAMPBELL. Yes, sir.

Mr. LOINES. It all started, as we were told by Mr. Hickox, from the fact that the French courts had determined that the bill of lading reciting that the goods were received for shipment was not a bill of lading at all, and therefore did not come within the terms of the instructions sent to the New York banks to advance sums against the bill of lading, insurance policy, etc.

Mr. EDMONDS. That condition is all wiped out now. There is plenty of cargo space and everything now.

Mr. HICKOX. I have not heard from any of the banks after this flash, as it were, a year and a half ago, that there has been any further difficulty, but the whole thing started from just that instance that I spoke about.

Mr. EDMONDS. I imagine that the banks when they found that part of a shipment was going forward on one steamer and they were getting a bill of lading for the whole shipment on that steamer, and the rest of it was going on another steamer—I suppose they would raise a question on that, too?

Mr. HICKOX. They might. I do not know about that.

Mr. EDMONDS. In other words, the division of a shipment was not because of intention but because of lack of space, but you give a bill of lading on your wharf on the entire shipment, and then divide it up into a couple of cargoes.

Mr. CAMPBELL. In instances where that happened I think you will find they are very small. Is that a frequent occurrence, Mr. Ryan, or is it an unusual occurrence?

Mr. RYAN. Well, it has been very infrequent, where the bills of lading have been returned to us and have the indorsements made on them that the goods were actually on board.

Mr. CAMPBELL. That is what I am speaking of. Mr. Edmonds is commenting upon the fact that you issue bills of lading showing shipment on board a certain steamer, or received for shipment on a certain steamer, and part of the goods go forward on that steamer and part go forward on another steamer.

Mr. RYAN. That is very unusual—very unusual now.

Mr. EDMONDS. It was common, though, during the war?

Mr. RYAN. Well, yes; but it is to the interest of the steamship company to forward lots complete, because of the customs difficulties, and so on.

Mr. EDMONDS. There is no question about that, of course.

Mr. RYAN. Now, Mr. Laws, I think, made some mention of a bill of lading in years past that had no clauses whatever providing for a limitation or liability. I have seen copies of bills of lading that were in force by our company—I speak from memory—back in 1876, from some old records that we have there, and those bills of lading had a number of clauses just as our present form of bills of

lading do; and I think what he had in mind was full cargoes, which at the present day is still the custom, but those bills of lading refer to all conditions of a charter party, and that charter party embodied practically all the conditions which are enumerated in the regular line bills of lading.

Mr. EDMONDS. Was there any change in the bills of lading after the passage of the Harter Act?

Mr. RYAN. Well, that goes a long ways back. I am speaking of bills of lading that were on file and were framed in our office.

Mr. EDMONDS. The Harter Act was not passed until 1893. You gradually drew these other provisions on it, did you not?

Mr. RYAN. I would say this—I am now giving simply my own views—the claim men are perhaps better qualified to answer that. I would say that these clauses were brought on largely for protection against crooks. There are crooks in every business and the lines had to protect themselves under the law against misrepresentations and sharp practices of people who were continually doing that sort of thing, and it has been demonstrated that the important lines, the regular lines, do not seek to cover themselves behind any screen, either in limitation of liability or in time of notice, when claims are just. I do not know of anything else that I could put before you that will be of interest.

Mr. LEHLBACH. Mr. Ryan, you said at the beginning of your remarks, particularly in answer to a question by Mr. Edmonds, that where an ad valorem charge for freight was accepted and the true value of the package stated in the bill of lading, that then the limitations in the bill of lading were removed. I suppose you referred only to the limitation as to the $100 valuation?

Mr. RYAN. Yes, sir.

Mr. LEHLBACH. Every other limitation contained in the bill of lading was applicable just the same?

Mr. RYAN. Yes; I should say so.

Mr. LEHLBACH. Leakage and breakage, etc.—whatever other limitations were in the bill of lading would still be applicable to that shipment; the only change would be the increase in the amount of liability?

Mr. RYAN. Leakage would hardly be applied for in that connection, because the present limitation would more than cover the value of any goods that are liable to leak, that are being shipped. I do not think there are any goods in that class where the value would exceed the limitation.

Mr. LEHLBACH. What I mean is that every limitation upon liability in the regular bill of lading would still adhere to this shipment for which an extra freight charge was paid, except the limitation as to the amount of value?

Mr. RYAN. Practically so.

Mr. CAMPBELL. Now, if you will go a step beyond that and issue an insured bill of lading, all exemptions would be done away with?

Mr. RYAN. Well, that would be, of course, a condition that would have to be brought up later, as to what extent our insurance would cover.

Mr. LAWS. Will you let me ask you a question, please?

Mr. RYAN. Yes, sir.

Mr. LAWS. You are connected with the International Mercantile Marine? You are the general assistant freight agent of the International Mercantile Marine?

Mr. RYAN. Yes, sir.

Mr. LAWS. And you have rather given me the impression that you are interested in protecting American shipping. Is that right?

Mr. RYAN. Why, certainly. We are running American ships.

Mr. LAWS. Now, tell me what lines does the International Mercantile Marine run?

Mr. RYAN. The American Line.

Mr. LAWS. How many ships are you running now?

Mr. RYAN. In the American Line?

Mr. LAWS. Yes; now running?

Mr. RYAN. We are running about seven.

Mr. LAWS. What other lines?

Mr. RYAN. The Red Star Line.

Mr. LAWS. Is that an American line?

Mr. RYAN. No.

Mr. LAWS. What line is that? What nationality; what flag is it under?

Mr. RYAN. The Belgian flag.

Mr. LAWS. How many ships are there in that line?

Mr. RYAN. I can not tell offhand. I think there are four or five.

Mr. LAWS. Now give us the next line.

Mr. RYAN. What do you intend to develop by that question?

Mr. LAWS. I am asking you for the purpose of developing——

Mr. CAMPBELL (interposing). It is simply this old saw that they have sawed away on so long.

Mr. EDMONDS. I think, Mr. Laws, the committee is entirely aware of that situation, unless you wish to put it into the testimony with the idea of developing something.

Mr. LAWS. I want to develop that the International Mercantile Marine is not an American line of ships, with the exception of a few ships of the American Line. They are all foreign ships.

Mr. CAMPBELL. Nobody questions that.

Mr. EDMONDS. That has been developed. We have developed that down here, and we have had hearings galore on it. There have been hearings before the merchant marine, there have been hearings before the Shipping Board. I have got them all in my office over there, and I can bring them over and put them in the record, under the affidavit of Mr. Franklin, president of the company.

Mr. LAWS. I did not know that. If the committee is aware of the fact that the International Mercantile Marine is not an American line, I will drop it.

Mr. EDMONDS. We absolutely know their condition.

Mr. CAMPBELL. The International Mercantile Marine Co. is an American company, and all of its stockholders are American citizens. It owns the stock of the White Star and the Red Star and some other companies, which in turn own ships that are flying the British flag.

Mr. EDMONDS. In order to save time I will say that was gone into very completely and the entire statement was made under oath. It is all a matter of testimony on record here, as to all the subsidiary companies together with their officers and everything else.

Mr. LAWS. If the committee knows it I am satisfied.

Mr. EDMONDS. Unless you wish to develop something new, it is useless to waste time on it.

Mr. LAWS. No; I will pass it. Let me ask you another question: How many changes, Mr. Ryan, have there been in bills of lading, in your bills of lading, of which you have any knowledge, in which the size of the bills of lading and the exemptions in the bills of lading have been increased?

Mr. RYAN. Exemptions?

Mr. LAWS. Yes; exemptions, we will say, leakage and all the great many exemptions that are in a bill of lading—limitations or exemptions.

Mr. RYAN. I do not think anybody is qualified to answer that offhand. That is a question covering a period of years.

Mr. LAWS. Give us your best judgment.

Mr. RYAN. There is no use of my giving a statement any way at all, because it would be misleading.

Mr. LAWS. There have been a great many, anyway, have there not?

Mr. RYAN. There have been some. I think the major conditions, liability conditions, have not been changed.

Mr. LAWS. They have not been changed, but they have been added to. Is that not a fact?

Mr. RYAN. I would not say that offhand; no.

Mr. LAWS. Well, to your knowledge, how many changes have been made?

Mr. RYAN. I would not answer that question by saying of my own knowledge, because it would be a misleading answer.

Mr. LAWS. Now, in what instance have you, as a rate-making man, reduced the rates for the carriage of any particular article when any additional limitation or exemption was put into the bill of lading?

Mr. RYAN. Did I say that?

Mr. LAWS. No; I am asking you if it was ever done. You did not say it.

Mr. EDMONDS. I would like to get the question. I do not quite get it. How have they reduced the rates for an increase in exemption?

Mr. LAWS. Where the exemptions have been increased or added to the bill of lading, have they reduced the rate?

Mr. EDMONDS. You mean the amount of exemption has been raised?

Mr. LAWS. No; I mean additional exemption placed in the bill of lading, whether or not Mr. Ryan has ever reduced the freight rate to the shipper because of the fact that the liability of the shipping company was thereby reduced. That is what I want.

Mr. RYAN. What particular instance can you point out where the liability has been reduced, and perhaps I can tell you what the effect has been?

Mr. LAWS. I can not do that. I am asking you the general question.

Mr. RYAN. You are asking hypothetical questions that can not be very well answered offhand.

Mr. LAWS. That is not a hypothetical question.

Mr. RYAN. Certainly it is.

Mr. LAWS. Can you tell?

Mr. RYAN. That kind of a question with a brief answer, a summary answer, is simply misleading. I came here for the purpose of trying

to help this committee in giving them information to meet the situation: now it is only beclouding the issue to ask questions of that kind, it seems to me.

Mr. LAWS. Now, let me ask you this question—if you can not answer it or do not care to answer it, say so. I want to get it on the record.

Mr. RYAN. I will tell you right now there won't be any "yes" or "no" answer to any question of that kind.

Mr. LAWS. Can you tell me, from your experience as the rate-making man for the International Mercantile Marine, of any instance in which you have reduced the freight rate to a shipper on a given article, where at or about that time there has been an additional limitation or exemption put in the bill of lading for those goods?

Mr. RYAN. Tweedledee and tweedledum. The same question in another form.

Mr. LAWS. Can you give me an answer to that question?

Mr. RYAN. I simply answer it as I did before.

Mr. LAWS. That is the best answer you can give?

Now, you said that the courts had fixed the limit of $100. Is that your conception of it, that the courts fixed the limit of $100 in the bill of lading?

Mr. RYAN. No: I did not say that. If I did say that, I want it corrected.

Mr. LAWS. Who did fix that limit, as you understand it?

Mr. RYAN. Under the Harter Act we are entitled to fix the limitation.

Mr. LAWS. I mean who fixed the $100 limitation?

Mr. RYAN. The steamship lines themselves.

Mr. LAWS. That is all I have. I tried to bring out in this point that I made, that if we have to absorb the additional liability it would soon disappear entirely and we would get back to our present basis, and the net result would be an additional burden on the steamship carrier.

Mr. HICKOX. Mr. Ryan, aren't the printed forms of the bills of lading now in use substantially the same as they were before the war?

Mr. RYAN. I think so; yes.

Mr. HICKOX. Well, reference has been made to certain "rubber-stamp" clauses that were put on during the war. Did not those rubber-stamp clauses refer to conditions of war alone?

Mr. RYAN. Practically they were all war clauses, and those have all been more or less eliminated now.

Mr. EDMONDS. Mr. Ryan, do you have joint rates in the bill of lading with the railroads?

Mr. RYAN. Not a joint rate. For the facility of business we have a through bill of lading system which enables the railroad agent or the western agent of the steamship line to name the shipper a through rate, a combination rate, which rates are shown separately on this through bill of lading, the rail rate to the seaboard plus the ocean rate to the point of destination.

Mr. EDMONDS. You do not make a rate through from Chicago, for instance, to the point of destination in Europe?

Mr. RYAN. It is virtually a through rate, but divided.

Mr. EDMONDS. A certain portion belongs to the steamship line and a certain portion to the railroad company?

Mr. RYAN. Yes, sir.

Mr. EDMONDS. And who does the transferring of that freight, the steamship company?

Mr. RYAN. No; the railroads in that case undertake to deliver to the steamer.

Mr. EDMONDS. To the pier?

Mr. RYAN. Yes.

Mr. EDMONDS. We had one of those bills of lading, a railroad bill of lading, I presume you would call it, of the New York Central Railroad here yesterday, and in that I noticed that there was a clause that the rate is subject to whatever terms the bill of lading may have at the time of the arrival of that freight at your pier.

Mr. RYAN. Well, I can understand that. That is possibly for some out of the way place on which there is no regular service.

Mr. EDMONDS. There seemed to be a complaint on the part of the shippers yesterday that they did not know what kind of a bill of lading they would get from the shipping company. Would it not be possible, with Chicago only 24 hours away, that your agent in Chicago could be informed as to what kind of a bill of lading they were subjecting themselves to when they delivered those goods to the railroad?

Mr. RYAN. Absolutely, and if necessary, when making his booking with the Chicago agent—if it was in Chicago—he could demand from that agent that a copy of the local bill of lading be attached to that contract.

Mr. EDMONDS. But is your agent in Chicago not in a position to guarantee that the bill of lading that he might have in Chicago would be the bill of lading that the shipper would be subject to when he arrived at New York?

Mr. RYAN. Certainly.

Mr. EDMONDS. They claim not. They claim that they do not know what the bill of lading is. Now, assume that this morning a shipper went to your office in Chicago and said, "What kind of a shipping bill of lading have you got?" They say, "Here is the International Mercantile Marine bill of lading. We are going to ship your goods on the International Mercantile Marine, and here is the bill of lading." Now, he looks at the railroad bill of lading, and what does he find? He finds that if you, during the day or during the progress of those goods to the seacoast, choose to put in a new limitation or a new item or a new clause in your bill of lading that might be detrimental to him, he would be subjected to it. Now, could you not in some way arrange to have your agent in Chicago guarantee that the bill of lading which he showed the shipper would be the bill of lading that he would have?

Mr. RYAN. Absolutely. That is sound business. We would not hesitate a minute to give a shipper a copy of the current bill of lading.

Mr. EDMONDS. But would you guarantee that when his goods arrived in New York that that is the bill of lading he would be subject to?

Mr. RYAN. If he made a shipment on a through bill of lading, that through bill of lading provides that it is subject to all the terms and conditions of the local bill of lading in use at the time the shipment is made, and I think it would automatically mean that the date of the through bill of lading would govern the con-

ditions of the local bill of lading which are in force on the day on which the through bill of lading is signed.

Mr. EDMONDS. That is not true in terms of the bill of lading. The railroad bill of lading that the man gets for his goods says "point blank," that it is subject to the bill of lading that may be in effect on the date of the shipment when it leaves New York. That does not seem good business to me. I think that is a thing that you can correct so easily that it ought to be done.

Mr. RYAN. Mr. Chairman, I think that feature has been well covered in a through bill of lading, which has been gone over by committees of various trade associations and steamship lines, and has now been filed with the Interstate Commerce Commission.

Mr. EDMONDS. But not in effect yet?

Mr. RYAN. No, sir; it is under consideration by them before final approval. If I remember rightly, that bill of lading says—it enumerates all the conditions, and it simply says that the shipment is subject to the terms and conditions of the local form of bill of lading not inconsistent therewith. Isn't that the wording of it, Mr. Hickox?

Mr. HICKOX. Yes; I think so.

Mr. RYAN. Not inconsistent with the rules which are printed on that bill-of-lading form.

Mr. EDMONDS. In that case the man in the interior would be able to know that the provisions were not going to be changed.

Mr. RYAN. Practically he has every protection now.

Mr. EDMONDS. The situation in that man's mind, particularly if he is not very conversant with the shipping business, is that he may be subject to any kind of condition when his goods arrive at New York, and it is a very poor business proposition for the steamboat companies to allow that kind of impression to get into a shipper's mind.

Mr. RYAN. Absolutely. That is one of the things which I want to strive to get into the minds of this committee, that the steamship organizations of New York are for upbuilding business and are along reasonable lines. You have heard these other men preceding me speak on the questions of claim. They have waived all the technical responsibilities. I suppose they had in mind the case where some one is a crook and tried to put something over on them, and then they might use the technical limitations on the bill of lading, but not otherwise. We run our business along reasonable lines. We try to see the other man's side of it always, and when a shipper can do business it is business for us, and naturally we have got to encourage that.

Mr. EDMONDS. It is good business for you, but we had representatives here and they showed one of these long bills of lading of the railroad where in big type on the bill, the biggest type there, it was stated that they were not responsible for anything that you had done. It leaves a doubt in the mind of the shipper right away that the boat company is going to do something to him, and that is the doubt that you want to remove.

Mr. RYAN. We have been striving—of course, we have had chaotic conditions during the war, but we have been striving to change those conditions on the through bill of lading and go over them very carefully and rectify them, and I think that probably Mr. Campbell may

make some remarks, some reference to that bill of lading, which now has been filed with the Interstate Commerce Commission.

Mr. EDMONDS. Is this through bill of lading going to provide that you will be able to take something at the point of origin here in this country and deliver it in London or Liverpool or somewhere in Europe?

Mr. RYAN. It is gotten up with the view of applying it, if possible, to any trade to any port.

Mr. EDMONDS. From an interior point to an interior point?

Mr. RYAN. From an interior point to the seaboard, and then beyond into an interior point on the other side.

Mr. EDMONDS. That would put you in the same position as the through carrier, with the exception that you do not guarantee anything all the way through. But how far would the bill of lading go in regard to the responsibility for liability, the loss?

Mr. RYAN. You mean beyond the steamship line?

Mr. EDMONDS. The railroads here have got to accept their full liability in case of loss; your companies then take the cargo out and then you have to assume full liability of loss, or insure for it, or something or other, or you have got to put in the bill of lading some limitations of liability to take it over to the other side; then again put it on another railroad over there, and I presume the laws of that country would require that railroad to assume some liability?

Mr. RYAN. That is one of the great difficulties, the connecting carrier beyond the steamship line, and I do not believe that there is any way that you can cover that. The most we can do is to offer the facility of carrying the goods to destination under the terms and conditions of the carrying line and subject to the local conditions at the port at which it is delivered ultimately.

Mr. EDMONDS. Will it put them in a position to go in and compete with the Germans for trade, the way they are handling it?

Mr. RYAN. The best way to find that out is to try it, Mr. Chairman. We are trying to find a way to do these things and this is the best that we could bring forth up to the present time.

Mr. EDMONDS. Now, you are going to take goods, we will say, into Peru—you do not go there. I suppose, but we will suppose you do go there—you know the conditions because you have heard them, and so have we all heard them. You have got the question of unloading into lighters, which is part of your through bill of lading; you have got the question of going through the customhouse, which is a part of your through bill of lading; you have got the question of going onto a strange railroad in a strange country under strange laws, which is a part of your bill of lading—until delivery somewhere up in the mountains.

Mr. RYAN. I can only say for the lines that we connect with that we would confine our operations almost wholly to concerns that we would consider reliable and responsible and who would deal with matters of that kind along just lines; and I suppose every operating line to South American ports would take the same precautions.

Mr. EDMONDS. I suppose you would have to do that, because otherwise you could not guarantee anything under the through bill of lading.

Mr. RYAN. It is to our interest to take care of the shipper's interests when the goods get beyond our line.

Mr. HICKOX. Mr. Ryan, you have had a through export bill of lading ever since 1899 in this country, have you not?

Mr. RYAN. Yes.

Mr. HICKOX. And hasn't it worked pretty well?

Mr. RYAN. Yes; there has never been, so far as I know, any serious complaint with it and it has been found of very great use to western shippers. It was designed entirely for their convenience. When the through-bill-of-lading system was stopped by the railroads for a time when commercial business was still carried on, it was found to be a great hardship and, of course, when nothing was moved excepting war goods and war materials and all commercial shipments were stopped, it did not make so much difference; but for a long time after the commercial shipments again moved we could only apply local bills of lading, and the pressure was so great from the shippers that finally Mr. Spence, who was then head of the Railroad Administration, simply put his foot down and demanded that something be done at once to restore that through-bill-of-lading system.

Mr. EDMONDS. This new through bill of lading?

Mr. RYAN. No; it was not a new one. He restored practically the old one—its old form.

Mr. EDMONDS. But this new one proposed now; is this a better bill of lading?

Mr. RYAN. Well, it contains certain modifications in the clauses to meet the views of the shippers and the changed conditions. Is not that right?

Mr. HICKOX. I think so.

Mr. EDMONDS. Would it be attractive to the shippers?

Mr. RYAN. I think Mr. Hickox can probably explain that more fully. He has got copies of it there and can show that the various trade bodies practically accepted it with certain minor objections, and certain sides of the case are now before the Interstate Commerce Commission.

Mr. EDMONDS. They entered into this subject?

Mr. RYAN. Yes; they held several hearings on it, one in Chicago, one in Washington, and one in San Francisco.

Mr. HICKOX. I do not think they held one in San Francisco. But I will give you a copy of that a little later.

Mr. EDMONDS. We would like to have that. I am very much interested in through bills of lading. I have watched the German system, and I would like to see it put into effect if possible here.

Mr. CAMPBELL. Wherein does your system differ from the German system? I think we might hear about that, because we have the traffic manager of the United American Lines here, who can tell you all about that phase of it.

This is going far beyond any investigation of theft and pilferage.

Mr. EDMONDS. It enters into the making of the through bill of lading, Mr. Campbell. That is the reason we are taking it up.

Mr. CAMPBELL. I am very glad to have you do it.

Mr. EDMONDS. It is a question of liability in connection with a through bill of lading. The questions of liability expressed in the views here are rather difficult, and to say the least the Germans would still have the edge on you in making a through delivery and guaranteeing that delivery; and as one gentleman said this morning,

you ought to be able to place your responsibility somewhere in order to get a through bill of lading to compete with theirs.

Mr. RYAN. You never will do it, Mr. Chairman, by imposing additional burdens on the steamship carrier. If he has got any latitude at all in his earnings over and above his operating expenses, then he has got some slack which he can take up to meet those foreign conditions—competitive conditions. Therefore, instead of imposing additional liability on the ocean carrier, it should be lessened, just for that purpose.

Mr. EDMONDS. Would that not lead to a great loss of trade for the steamship companies, and a corresponding increase in trade by the company that does give the guaranty?

Mr. RYAN. Well, I do not know. I think that is one of the conditions which to a large measure will have to be left to the transportation lines. It is a problem for them to work out. They are just as keen to develop those trades as the Germans are, and I think that we can match up with the Germans any time.

Mr. EDMONDS. Yes; but I am trying to advance the thought here that those things have got to be looked into, and if you are going to get the trade, you have got to meet conditions. We are just as keen to do that as anyone could be.

Mr. HICKOX. Mr. Ryan, on this question of the giving of increased liability for an increased freight rate, which you have described, is that process followed substantially by all the principal lines trading in New York?

Mr. RYAN. You mean as to whether they would issue a bill of lading including the liability? I do not hesitate in saying for all the continental and United Kingdom lines, which practically covers the whole North Atlantic, South Atlantic, and Gulf lines, that they would do that.

Mr. CAMPBELL. But do the shippers want that?

Mr. RYAN. Only on very rare occasions. I do not call to mind a single case where we have been asked to put the value on the bill of lading.

Mr. RUSH. Mr. Ryan, I am very much interested in what you say about that special valuation clause. Does the International Mercantile Marine do any volume of trade in that valuable stuff?

Mr. RYAN. I think I stated that, roughly, I thought that between 80 and 90 per cent of the cargo carried was of the character of goods which are now covered by the liability as shown in the bill of lading, $100 to $150.

Mr. RUSH. And the other 10 per cent might be this more valuable stuff?

Mr. RYAN. The other 10 or 20 per cent might be higher grade.

Mr. RUSH. Can you give me any idea as to what rates you charge, New York to Liverpool, based upon value?

Mr. RYAN. I would undertake to make a rate which would be commensurate with the risk incurred.

Mr. RUSH. Can you give me any idea what it is?

Mr. RYAN. I would have to figure it out. I would do it in this way: I would, first of all, consider what the cost would be to me to cover that with insurance—and I still maintain it is good business to cover your extra risk. Every business must have its limit of liability, but for convenience to a shipper, if he demanded the full

valuation on the bill of lading, I would undertake, first of all, to see what the insurance company would charge me, and I would base the rate on the additional cost that I would have to pay the insurance company.

Mr. RUSH. And that may vary in accordance with the kind of goods shipped. There would not be any uniform rate?

Mr. RYAN. Yes; you can not make it uniform.

Mr. RUSH. One thing more I would like to ask regarding this reduced liability. Of course, that has been comparatively recently legalized, as I understand it. Did not these various steamship owners operate on a very much larger liability prior to these recent decisions, and still get away with it?

Mr. RYAN. I do not know offhand when that change was made, either reducing or increasing. As a matter of fact, I can not tell you from memory how long the $100 or $150 limitation has been in force.

Mr. RUSH. It has only been upheld recently, I believe.

Mr. RYAN. I think it has been held for a long time——

Mr. RUSH. I mean 20 or 25 years?

Mr. HICKOX. It was in 1884.

Mr. RUSH. But they used to operate under it before it became a law, and were still able to operate steamships at a profit?

Mr. HICKOX. The decision of the Supreme Court on the subject was rendered in 1884, in Hart against Pennsylvania Railroad.

Mr. RUSH. But before that they operated steamships at a profit on the higher valuations?

Mr. CAMPBELL. British steamers, because you had no American steamers.

Mr. RUSH. We did have a very large merchant marine in 1860 and prior to that. The British were able to get along with a full liability bill of lading. That is the point I want to bring out.

Mr. CAMPBELL. But for entirely different reasons. Why did it disappear?

Mr. RYAN. Mr. Laws has asked other people something about carrying the full liability. He did not ask me that question. I was hopeful that he would. I do not know how our people would take that. It is a question, as the other members have stated, for the directors or the managers of the company to decide.

Some years ago we brought out four or five up-to-date freight steamers—a good many years ago—and the insurance underwriters demanded the same rate of insurance on that type of boats that they did on a lot of old hookers that were then used in the freight-carrying trade. We pleaded with them that it was not a fair proposition to put the same rate of insurance on our boats, which were up to date in every respect, as on some of these old hookers, and we could not move them. They sat back in their chairs and smiled and said, "We are sorry, but the rate is the same on every line, every steamer." Based, I suppose, on the theory that the insurance companies fix their rates for this year based on last year's losses, and so on. So that in that case I do not see that the insurance companies take any great risk. At that time we said, "All right, we will go into the insurance business ourselves." And we did. I think we built two ships in a very short time out of the premiums that we saved, and if you will ask my opinion—I do not know how our company will take it,

but if this Harter Act is changed and the full liability is placed on the steamship carrier, I for one will not only personally recommend but urge that we take on the full insurance risk. It is a logical sequence.

I do not offer that as any threat. Do not misunderstand me. It is simply a statement that I want to place in your mind.

Mr. LAWS. You can not scare me at all. If you think you are scaring me, you are mistaken.

Mr. RYAN. Well, that is what happened, and I think personally I am in favor of coupling up transportation with insurance. I think it is a good thing.

Mr. LAWS. Then we are not so very far apart.

Mr. RYAN. Not at all. I do not know whether our directors view that in the same light or not. I do not know that.

Mr. LAWS. Just between us, you are an inexperienced man——

Mr. RYAN (interposing). Now, I do not want any more of these hypothetical questions.

Mr. LAWS. Do you know of any sound, good, moral business reason why a steamship company that is paid to carry goods should not assume and be liable for the full loss of merchandise by theft, pilferage, and nondelivery, where it is shown legally and properly in the courts that that loss resulted from the negligence of that particular carrier?

Mr. CAMPBELL. No; and under the law you can recover in every case on your statement of the facts. You know it.

Mr. LAWS. If lawyers agreed we would not be practicing law.

Mr. CAMPBELL. You have stated a case that would absolutely insure recovery in any court.

Mr. RYAN. Let me answer that by asking you another question. What is the object of the insurance company? What do they do? What are they brought into being for?

Mr. LAWS. I will not answer your question until you answer mine.

Mr. RYAN. That answers your question.

Mr. LAWS. If that is your answer to it, all right.

Mr. RYAN. I would consider it an answer.

Mr. EDMONDS. Are there any more questions, gentlemen? If not, we will excuse the witness.

Mr. CAMPBELL. Mr. Chairman, we have the traffic manager of the Munson Line, and also of the United American here. Their testimony will be very largely cumulative in character, excepting that the traffic man for the United American Line was, prior to the war, in the service of the Hamburg-American, and he can tell you something of that German situation if you would like to know it. Other than that I suggest their testimony would be simply cumulative along that line.

Mr. EDMONDS. Let him tell us about that. We would like to hear what you know about the German situation.

STATEMENT OF MR. J. E. WALDORF, CHICAGO, ILL.

Mr. CAMPBELL. You told me before we came in here that you knew of the German situation with respect to through bills of lading, as I understood you.

Mr. WALDORF. I told Mr. Herrick.

Mr. CAMPBELL. I want you to tell the chairman.

Mr. WALDORF. Mr. Herrick made the statement that in making a contract in Chicago the contract provided that the conditions of the ocean bill of lading would apply; also that when he made a contract for shipments, particularly to Hamburg, the conditions of the connecting line applied, and he said he could not get the bills of lading—he could not see the bills of lading that applied against those contracts. I want to say that our Chicago lines have not only our ocean bills of lading but also copies of the connecting line bills of lading in their possession.

Mr. EDMONDS. What he said was this, that he had no assurance when the shipment arrived at the port of New York that it would be subject to the bill of lading you had on file in your Chicago office.

Mr. WALDORF. Our contract covers the shipment; the contract says the bills of lading in force apply on that.

Mr. EDMONDS. Yes; but the bill of lading the railroad company gives does not.

Mr. WALDORF. I think he could hold us on our contract.

Mr. EDMONDS. It is possible he could; but he said his situation was that he had to take the bill of lading of the railroad, and in large type—he had one of them here and he showed it to us in large type where it said, "Subject to the bill of lading of the steamship company over which it is to go at the time of shipment."

Mr. WALDORF. That may be true.

Mr. EDMONDS. If you would give him assurance at your Chicago office that anything shipped under that bill of lading would be accepted, I think you would clear up the trouble, and I imagine it is good business for you to do it.

Mr. WALDORF. I certainly would say the Chicago office would stand back of the contract they have issued. That contract says that the bill of lading in force on that date applies, regardless of what they may say.

Mr. EDMONDS. You may have a bill of lading in the railroad, and the man signs the bill of lading of the railroad, but he is a little troubled when his conscience gets to work and he wants to know where he stands; and if it is changed—it is not possible to change a bill of lading in four or five days, anyhow?

Mr. WALDORF. No.

Mr. EDMONDS. So you can very easily have the man with whom you issue the bill of lading remove that objectionable clause and say, "Subject to the form of such and such a bill of lading."

Mr. WALDORF. I think, if it would satisfy Mr. Herrick, we would be willing to say our contract would apply regardless of that provision.

Mr. CAMPBELL. Do not overlook the fact Mr. Herrick is shipping with the Triangle Steamship Co. and that class of operators.

Mr. EDMONDS. You were going to tell us a little something about how the Germans handle their bills of lading. Have you any idea about that?

Mr. WALDORF. I do not know anything about the Bremen Line conditions.

Mr. EDMONDS. What do you know about their through bill of lading—the German system of issuing a through bill of lading which guarantees arrival at the inland port in a foreign country?

Mr. WALDORF. I do not know anything.

Mr. CAMPBELL. Before the war, were you in the service of the Hamburg-American Line?

Mr. WALDORF. I was with the Hamburg-American Line before the war; that is true; but as for through bills of lading from the interior, I do not think very many of those bills of lading were issued. I think the shipment originating in the interior was usually controlled by the forwarding agent, who carried the stuff from the interior to Hamburg, and there a through bill of lading was issued from Hamburg to most anywhere in the United States.

Mr. EDMONDS. It has been published in some of the reports of the Commissioner of Navigation that the Government owned the railroads in Germany and the Government was interested in the steamship lines in Germany, and in their advancement, and the only question that came up in my mind was what they did at the other end when they got to places like Peru and Mexico where theft and pilferage were going on. But they did issue a through bill of lading from the town in Germany all the way to the point of destination. That, I think, was in the 1909 report of the Commissioner of Navigation. And I presume they are doing it to-day, but I wanted to know how they overcame the loss that was occasioned and must be occasioned with their goods in the customhouse, and so on, in South America—unless they purchased their way through the customhouse and the railroads down there to protect their goods. That is the thing I am interested in particularly.

Mr. WALDORF. I do not think I can answer that question, but I think they would be up against the same condition as everyone else when it comes to delivering goods; that is, to the small points in South America.

Mr. EDMONDS. These merchants testify they get German goods but they do not get our goods. That is a very unfortunate situation and we ought to find some way of correcting that.

Mr. WALDORF. Roughly, the condition now——

Mr. CAMPBELL. That must have referred to the condition before the war, because the Germans are not doing anything down there now.

Mr. EDMONDS. They are doing too well to suit me from the last reports I get. They are growing by leaps and bounds. It is rather a hard thing to believe, but the reports show that.

Mr. CAMPBELL. Do you care to hear from Mr. Kellogg? It is simply cumulative.

Mr. EDMONDS. Just let him confirm the statements as he goes along. We do not want to have a duplication of testimony, and if they handle the freight exactly the same as the International Mercantile Marine, say so, and if their checking system is the same, say so, and we will know what that is.

STATEMENT OF MR. CHESTER B. KELLOGG, NEW YORK, N. Y., FREIGHT TRAFFIC MANAGER, MUNSON STEAMSHIP LINE.

Mr. KELLOGG. I want to impress strongly upon this committee that we believe we are servants of the shippers, in that we make every endeavor to protect the shipper as far as possible. Now, we naturally do protect ourselves on our liability in our bill of lading, because that is the basis on which we get our living and, therefore, we do protect

ourselves to a great extent under that liability. It also protects us against crooked methods which we are bound to run up against. There is plenty of it among the shippers, but it is not general. The shipping public in general are very good, but we do run up against it and we need protection.

Now, it seems rather peculiar that the insurance companies should be here rapping the steamship companies. It seems to me there must be a reason for it—that those insurance companies have run up against losses they had not anticipated, brought about by conditions which were caused by the letting down of the morale. It is a matter that is well known everywhere among the manufacturing interests in this country, as well as overseas and everywhere else, and it is also well known that that thing is fast correcting itself.

There was no great demand for ad valorem rates prior to 1914. That demand came when the insurance companies began to advance their rates to a prohibitive basis. Now we are willing to protect the shipper on the ad valorem value and do do it, both to South America and to Cuba.

The steamship companies have been accused of discrimination. I want to say that the insurance companies discriminate against American ships—good American ships—and refuse to give rates to Shipping Board boats that are good steamers, classed 100-A-1.

Now, there is no use taking up a contention here between the ship companies and the insurance companies, because there should be cooperation between them—there ought to be cooperation between them. If, as you might infer here to-day, these insurance companies want to clear this thing up, so that there will be no risk, what is the use of an insurance company—why the necessity of an insurance company?

Mr. EDMONDS. I think, Mr. Kellogg, I should state to you, which possibly you do not know, that it was our committe that invited the insurance men here. I do not think they made any request to come here particularly. As a matter of fact, I think if they had had their way they would have come down in October rather than now.

Mr. KELLOGG. Yes; but I was rather surprised at the attitude they have taken.

Mr. EDMONDS. The committee was not aware what attitude would be taken. We were aware of the losses that were occurring and were also aware through the public press of the increasing rates, and were also aware of the fact it stood against our making sales, particularly in South America.

Mr. KELLOGG. It seems to me the question is one of where we are now. It is the water that has gone over the dam that has caused the trouble. It is the question of the great volume of goods that were sent out of this country during 1919 and 1920, which caused congestion in all these ports. And another thing, our shippers are suffering a great deal from having shipped by other lines that were not regular in their trades, because the regular lines knew that they should handle only a certain amount of freight. Now, it was to the interests of the shipper himself and to the interests of the consignee to limit overcarrying in order to protect the interests of everybody. In our Cuban trades we never booked any freight from June until October, 1920, but that does not mean we stopped our steamship service. That means we were carrying freight which had been booked by the ship-

pers who had not known their ability to ship for the past six months. They booked with us for certain steamers and the freight never arrived, because of the manufacturing conditions in this country, and as a result we stopped our facilities and used our facilities to take care of old bookings gradually, to keep our terminal facilities from being blocked up, simply because the terminals in Cuba were not able to take care of it. Then the shippers took whatever ships were offered them for Cuba, whether regular line or not, and some of these spasmodic lines went in there and made representations to them they were able to take care of the situation, and they were not able to handle the situation; they had no terminals, although they said they did have terminals. And those are the conditions which brought about this chaotic condition; those are the things that made the insurance companies so interested in this question of liability, because they have suffered losses. We, too, have suffered losses.

Mr. EDMONDS. It got to be an alarming condition when the insurance companies refused altogether to take insurance to certain points. It was certainly going to injure our trade when they could not get insurance, and no shipper, under your bill of lading, would care to make a shipment unless he did get insurance.

Mr. KELLOGG. I want to say we have found the shippers are taking them, those that are willing to ship cargoes, and we find more shippers offering cargoes, and even the old shippers coming back are willing to take them, and they are coming to us and asking for ad valorem rates where the goods are of high value now, as compared with prewar.

Mr. CAMPBELL. Do your customers object to your bill of lading?

Mr. KELLOGG. I have not heard of any objection from them at all. We have offices in Chicago; St. Louis; Philadelphia; Baltimore; Mobile, Ala.; and New Orleans, and information can be gotten through those offices as to what our rates are and they can have our bill of lading and all the information necessary for making a thorough shipment.

Mr. EDMONDS. What is the condition of affairs down in South America to-day?

Mr. KELLOGG. They are slowly clearing up. The situation in South America is there are a great many goods that have not been received, for this reason—that those goods arrived there after the break in prices, and then the financial conditions became so acute there that it tied up the whole situation. There were goods bought on values far beyond the present market values. Now, if the consignee can get out, he is going to get out. The merchants of this country sold goods a year and a half ahead, and before the year and a half was up, in the line of textiles the prices had dropped and they were urging the steamship companies to push this stuff out, to get it out of the country. They wanted to get their bills of lading in bank and get their money. They were very strict at that time about giving credits; they asked for letters of credit to be placed in the banks here so that they could get their money, and now the banks are coming back to them because their drafts have not been accepted at the other end.

Mr. EDMONDS. How about your pilfering in the case of those goods; have you had much loss?

Mr. KELLOGG. That is a question Mr. Knowles is acquainted with, because he handles that portion of it at the other end. Now, the

question has been brought up about these changes in bills of lading. I have been with the Munson Line for 22 years, and I do not know of any clauses that were in any way changed to lengthen the bills of lading to any appreciable degree. I do know we have improved the bill of lading; we have made it larger and made the print larger and made more space for listing the cargo in those bills of lading, because there is more miscellaneous cargo going.

Mr. EDMONDS. I could not read the bill of lading the other night, because I did not have my reading glasses; I do not know what the shipper must have done when you had the other one.

Mr. KELLOGG. The others were very bum. This one can be read, but the others were very bum. Now, as to the question of changing the conditions of the bill of lading for 20 years back. The world has been growing; we are exchanging more valuable goods, more high-class goods, between one another than we used to exchange. That is one reason for the difference of the liability and sticking to it closer than we ever did before.

Mr. EDMONDS. That advance is more in price than in the carriage of the goods.

Mr. KELLOGG. And in the volume of goods shipped.

Mr. EDMONDS. No; in the price of the goods shipped.

Mr. KELLOGG. Yes; and in the volume of goods shipped, generally speaking.

Mr. EDMONDS. Lloyd's Annual claims the amount of interchange last year was only 35,000,000 tons; that is the amount of shipping that could be used. It was 35,000,000 tons as the maximum interchange last year, and the year before we had 45,000,000 doing the same work.

Mr. KELLOGG. I was talking about the volume of high-class goods—the volume of goods exceeding the valuation of $100 per package.

Mr. EDMONDS. That has happened, however, without you increasing your liability at all; you still hold your liability down to $100 per package.

Mr. KELLOGG. But the contention brought up here was that before the Harter Act the steamship companies made money without that protection.

Mr. EDMONDS. The only steamship lines, I think, we had running were one or two that got the postal subsidy, were they not?

Mr. KELLOGG. You mean as far as American lines are concerned?

Mr. EDMONDS. Yes. The committee is simply on a searching expedition; that is all. We want you to tell all the story you think would be interesting to the committee in regard to this liability question. It may be possible before very long we will be called upon to pass upon an amendment to the Harter Act, proposed in the Senate, and we would like to know something about the situation before we take that matter up.

Mr. KELLOGG. We should not consider it was right for us to take goods that might be valued anywhere from $10,000 to $20,000 and to ask the same rate of freight on them that we would on goods valued at $100.

Mr. EDMONDS. I do not think you are doing anything wrong in asking additional freight rate on that.

Mr. KELLOGG. There is a great variation in the values of those things. You take the silks. They all vary in price. One case of silks might be worth only half of what another case of silks would be worth.

Mr. CAMPBELL. Mr. Kellogg, how frequently do you have applications made to you by shippers for the deletion of the release valuation clause and for a declaration of the invoice value of a higher value?

Mr. KELLOGG. I could not give the number of the bills of lading, but it has increased recently quite rapidly, on account of the increased insurance rate which the brokers charge. We get considerable of it on boots and shoes, textiles to South America, and boots and shoes to Cuba.

Mr. CAMPBELL. Have you ever refused that to the shipper?

Mr. KELLOGG. No. In fact, we do differently than the transatlantic; we carry the rate right in our tariff and any of our agents can quote it.

Mr. CAMPBELL. For instance, on a deleted limited value clause to Habana, what would be your increase in the rate?

Mr. KELLOGG. At the present time it is 2½ per cent beyond the regular freight rate.

Mr. CAMPBELL. Two and one-half per cent beyond?

Mr. KELLOGG. Two and one-half per cent.

Mr. LAWS. On the ad valorem?

Mr. KELLOGG. On the ad valorem. That rate is based rather high, to Habana on account of the fact that we take care of the handling charges of the wharf, the wharfage charges, and deliver to the carts of the consignee. That is a custom which is carried out in Habana.

Mr. EDMONDS. Do you carry that through the customhouse, too?

Mr. KELLOGG. We carry through the customhouse, but we lose control of it to a great extent in the customhouse on account of the fact it is a customhouse, bonded, and carried on by the customhouse officials.

Mr. EDMONDS. Is there any pilfering down there in the customhouse?

Mr. KELLOGG. There was a great deal of pilfering down there in the customhouse during the congestion, but the Habana docks are fairly well cleared up now and that is under control.

Mr. EDMONDS. You can watch it all the time, unless they have a bonded warehouse.

Mr. KELLOGG. The docks we go to are controlled by us, as far as they can be controlled under the Cuban law.

Mr. EDMONDS. The customhouse warehouse is right down at the docks in Cuba?

Mr. KELLOGG. Yes, sir.

Mr. EDMONDS. Is that true farther south?

Mr. KELLOGG. Mr. Knowles can testify to that; I can not answer as to that.

Mr. CAMPBELL. Prior to the war were the freights in the trades in which you were engaged on a competitive basis?

Mr. KELLOGG. Yes.

Mr. CAMPBELL. Were you at that time operators of large charter tonnage?

Mr. KELLOGG. Yes.

Mr. CAMPBELL. Have you since the war been operators of Shipping Board tonnage?

Mr. KELLOGG. Yes. And we are operating a regular line of Shipping Board boats to South America—these large passenger boats—the only American passenger line I know of to South America. I know the *American Legion* was recently put into that trade.

Mr. EDMONDS. How many passenger boats have you running in that trade now?

Mr. KELLOGG. There will be three.

Mr. EDMONDS. The *American Legion* will make the third?

Mr. KELLOGG. The *American Legion* will make the third. There are two others, the *Martha Washington* and the *Callao*, that carry some freight, being smaller boats. We are now operating the *American Legion*, the *Aeolus*, and the *Huron*.

Mr. EDMONDS. They are all above 10,000 tons?

Mr. KELLOGG. Yes.

STATEMENT OF MR. KENNETH E. KNOWLES, NEW YORK, N. Y., REPRESENTING THE MUNSON STEAMSHIP LINE.

Mr. CAMPBELL. What is your position, Mr. Knowles?

Mr. KNOWLES. I am manager of the South American part of the Munson Line, which really has to do with the operation of the boats—the physical operation.

Mr. CAMPBELL. Will you tell the committee the physical condition which has existed in the South American trade since the armistice and the present condition? Just trace the situation down there for us; we want to know fully what the situation is.

Mr. KNOWLES. I should like to preface any remarks I may make directly on that subject by speaking of the condition I have heard several of the gentlemen refer to—that is, the demoralized condition of the human element since the war—and to say that lately I think we have seen a betterment of that condition. To that condition I feel a very large portion of the present difficulties with regard to claims is due. Particularly, perhaps, that is so in some of the South American countries where the cost of their imported materials, which are a very large portion of their trade down there, have gone up so tremendously on account of the exchange. It has made attractive to them a great many articles that perhaps would not have attracted them under other conditions, and it is only lately that we find the power of the unions, particularly in South America, being broken, as is evidenced, perhaps, by the *Martha Washington* case, which you gentlemen have in mind.

I believe this is the first time in eight or nine years when we have had any competition of a neighbor in Buenos Aires. We have been forced to accept such men as were assigned to the respective duties, and there was no choice to be had; we simply had to take them. Now we find a change has been made, and it will probably extend itself so that we will have an opportunity of choosing and have much better care of our help, such as watchmen, tallymen, and other positions of that kind.

The story of the operation in South America is fairly short. Most of the ports are entirely fiscalized; in other words, they are con-

trolled by the Government; practically all of the warehouses. I say "practically" because I do not know of any outside that are not controlled by the Government. We will take Rio and Buenos Aires as an example. The steamer coming alongside there is assigned its berth by application, we will say, to the customhouse, and the discharge is made directly into the depots of the customhouse. That is our delivery at Rio to the consignee, gentlemen—to the customhouse—and the same applies in Buenos Aires; and the delivery from the customhouse to the consignee is made either fairly promptly or very much later, in accordance with the consignee's desire to get his goods out.

Mr. CAMPBELL. What is the physical condition in that respect now?

Mr. KNOWLES. It is very bad. At the present time the last information I have seen is that there are some $35,000,000 to $40,000,000 worth of goods in the warehouses at Buenos Aires that have lain there for months, and it is due largely to the drop in prices and the fact that the consignees do not desire those goods unless they can get them at a price which is satisfactory to them.

Mr. EDMONDS. Do you make your delivery at the customhouse wharf?

Mr. KNOWLES. Yes, sir. At Buenos Aires there are four very large docks and the warehouses are situated along the side of the river in a double row, with cranes in between the boat and the warehouse, and even cargo which carries no duty at all is discharged directly into the customs warehouse. Occasionally, such material as lumber, coal, and bulk cargoes are discharged under Government supervision into regular depots for this purpose. Of course, they are not subject to pilferage to any great extent.

Mr. EDMONDS. Have you had much loss of cargo?

Mr. KNOWLES. We have had a very considerable loss; but, considering the conditions, I think that the loss has been comparatively small.

Mr. EDMONDS. Of course, you have not the condition to meet there that they have on the West Coast. You contract yourself out of everything and deliver to the consignee when you have delivered to the customhouse?

Mr. KNOWLES. Yes, sir.

Mr. EDMONDS. So that you are done with it then?

Mr. KNOWLES. Yes.

Mr. EDMONDS. Your stealing or pilfering would occur on the ship?

Mr KNOWLES. If it occurred.

Mr. EDMONDS. Or on the dock here.

Mr. KNOWLES. We have spent a great deal of money in the course of the last two years in order to prevent any possibility of that very thing. We have sent members of private detective forces down as members of our crew. We have arranged with the deck officers and men on whom we could absolutely rely to take time which perhaps they were entitled to ashore, or liberty time, in order to do their watches at the hatches, in addition to the regular watchmen which we assigned and whom we picked as best we could as the best men available.

Mr. EDMONDS. You must have had considerable losses to take those precautions. Originally, I suppose you started out and took the pre-

cautions you would ordinarily, and it grew to such an extent you had to take those precautions in order to protect their cargo?

Mr. KNOWLES. We did. Originally, for a period perhaps of one or two months. And that was particularly with the starting of the passenger steamers which carried a very much higher grade of cargo than the freight steamers; naturally, because they get the express package freight; and as the upcurve of our normal line, we will say, was discovered, when those first two boats went out, we took additional precautions.

Mr. CAMPBELL. What ships were they?

Mr. KNOWLES. The *Moccasin* was the first boat, the *Callao* was the second, and the *Martha Washington* was the third. Since that time we have had constructed in all of the boats special compartments in charge of a special deck officer in which certain materials, such as silk stockings, underclothing, shoes, plated silverware, and things of that kind, have been stowed under the personal care of one of our reliable deck officers, such as the first or second mate. He has had to get a receipt in the South American port of delivery for the different articles shown on his list and deliver it personally on his return to the office.

Mr. EDMONDS. For all packages?

Mr. KNOWLES. No; for certain classes of freight which could be placed in compartments of that kind and which was most liable to pilferage, as found in our case and the case of others.

Mr. EDMONDS. In the case of hosiery, for example?

Mr. KNOWLES. Yes, sir.

Mr. EDMONDS. Have you found any pilferage of goods you put in this special stowage?

Mr. KNOWLES. It has always been limited; I would not say entirely. Occasionally we have found stockings in the boat which apparently came from some place of that kind; but I do not think any of that has come since we had the compartments fixed. That has come on occasions when we had a little more cargo than could be contained in that particular compartment and perhaps was stowed where somebody could get at it, but I think in most instances very little has been taken off the boat. At times when we have suspected something of that kind we have had a search made, and in one or two instances we have found small quantities taken off. Those are cases where the cargo is most likely to pilferage, because in order to get off the boat the goods must be concealed in the clothing, and they can not get away with much at any one time.

Mr. EDMONDS. Have the competitors of your line taken the same care?

Mr. KNOWLES. I could not say.

Mr. EDMONDS. How about the Lamport & Holt Line; they are running down there?

Mr. KNOWLES. Yes, sir. I do not know as to their methods, but undoubtedly they have a strong room. Whether they have had any additional compartments built other than to handle precious jewerly and things of that nature which would take care of clothing, hosiery, and things of that kind I do not know.

Mr. EDMONDS. Do they charge a special price on those things that are put in those compartments.

Mr. KNOWLES. We do not charge a special price for that. They would charge a special price on the valuation basis, I presume.

Mr. EDMONDS. You do charge 2½ per cent, as Mr. Kellogg stated.

Mr. KNOWLES. That is, if they request a rate based on the valuation basis, as I understand it.

Mr. EDMONDS. Yes.

Mr. KNOWLES. But the strong room I am speaking of is provided at our own expense for our own safety, for the safety of the shipowner himself, who places the captains in charge of it to take care of things he thinks are especially susceptible to pilferage, and there is no extra charge for that.

Mr. EDMONDS. In that strong room you carry regular class freight?

Mr. KNOWLES. Yes, sir.

Mr. EDMONDS. This 2½ per cent carriage is virtually an insured bill of lading?

Mr. KNOWLES. Yes, sir.

Mr. EDMONDS. You virtually guarantee delivery of the goods at point of destination?

Mr. KNOWLES. That question of the insured bill of lading I will have to leave to Mr. Kellogg. I do not understand the traffic end of it as well as he does.

Mr. CAMPBELL. Mr. Knowles, would it be practicable to put all of your cargo into a strong room on the ship?

Mr. KNOWLES. No; it would not.

Mr. CAMPBELL. Or to divide the ship into strong rooms?

Mr. KNOWLES. The ship is divided now into what you might call strong rooms in the holds, and that is as near as you can possibly come to it to that extent. The cargo is stowed in those holds, perhaps 'tween deck, and the hatches are battened down. To a very large extent, that turns each hold into a strong room: it is very difficult to enter that until they opened for loading and discharge.

Mr. EDMONDS. Don't they open those up every day in looking out for fires?

Mr. KNOWLES. Not necessarily. There is that inspection made on passenger boats, of course; but there are bulkhead doors on the passenger boats which would be accessible to the proper officer making the inspection. On the freight boats it is quite usual to have a boat go down without opening the hatches at all, unless there should be cargo in there that would be badly damaged by sweating on the boats, or something like that, when one portion of the hatch might be raised from time to time in order to change the air.

Mr. EDMONDS. Those English lines, like the Lamport & Holt Line—do they carry the same limited liability that you do in your bills of lading?

Mr. KNOWLES. That I can not answer; I will have to refer that to Mr. Kellogg.

Mr. KELLOGG. They do carry the same liability and use the same freight rates in making their ad valorem.

Mr. KNOWLES. The point I want to make, Mr. Chairman, is in the course of the last two years, speaking for our line, we have spent considerable of our own money, and we have made every effort possible in order to protect the shipper's interests; and, as far as the settlement of claims is concerned, we have endeavored to consider those from a fair-minded viewpoint rather than on a technical basis.

We have not only spent a great deal of time thinking out ways and means of protecting them ourselves, but we have listened with a good deal of interest to the suggestions made by others at different times: and among them some of the real shippers do occasionally come with very good suggestions along that line and many of them have been adopted. One thing which has been brought up, but which has never been successfully carried out, I think, in the South American trade, is the kind of packages in which goods are shipped. We find frequently, on delivery at our piers, that packages containing material which would be subject to pilferage are not in the strongest condition in which it might be possible to have them, and we have recommended in the case of certain articles a certain amount of strapping which would make the entering of the case difficult without breaking it all up so that it would be noticed immediately. But in a great many instances, I think, it has not been carried through to the fullest extent. That, of course, is beyond our power to control, unless we absolutely refused to take the goods—which would probably be accepted by our British competitors in that same condition if we did not accept them.

Mr. EDMONDS. Is it true that the English ship, delivering goods at the ports in South America, will take less care with the American goods they are delivering than of the English goods, in unloading, and in so far as the handling of the goods is concerned—either in unloading on to lighters or unloading on the wharf?

Mr. KNOWLES. I do not know of any specific case I could mention to that effect.

Mr. EDMONDS. It was so reported by one of the supercargoes of the Shipping Board.

Mr. KNOWLES. I have heard it has been so reported, but whether it is true or not, I could not say.

Mr. EDMONDS. You have never had any personal knowledge of it?

Mr. KNOWLES. I have never had any personal knowledge of it.

Mr. EDMONDS. I do not know that there is any other question I want to ask.

Mr. CAMPBELL. What can you do that you are not doing to safeguard this cargo? If Congress had said you had to take the full liability and had wiped out the Harter Act and said "We make you absolutely responsible for the shipment as insurers," what could you do that you are not now doing?

Mr. KNOWLES. If we had known of anything else, Mr. Campbell, I think it would already have been done.

Mr. EDMONDS. Let me ask you a question, just as a matter of curiosity. The rates to the West Coast of South America and more or less to the East Coast of South America, for theft and pilferage, have advanced rapidly with the insurance companies; so much so that it was a matter of comment in the nautical journals and the different marine papers, and so much so that they said at one time they would not take anything to certain ports and certain places and thereby rendering the position of the shipper very precarious if he took the ordinary bill of lading. Now, do you find this 2½ per cent covers any liability that may occur in that regard?

Mr. KNOWLES. I could not answer that, Mr. Edmonds, because that also is out of my jurisdiction. I really have under my own fingers the physical operation only, and as to the relation of rates

with the traffic itself. Mr. Kellogg would have to answer that question.

Mr. KELLOGG. I think, Mr. Chairman, this movement on the ad valorem basis you speak of has only been a recent movement and we are not in a position to say just how it has worked out.

Mr. EDMONDS. It is absolutely too early yet to say?

Mr. KELLOGG. It is absolutely too early yet to say how it really is working out. It takes time to average that thing up and to see whether we have been getting paid for our risk.

Mr. EDMONDS. If you folks have been taking and all these gentlemen that have testified here have been taking special precautions and the ordinary everyday precautions that you ought to take in unloading the vessels, handling the goods and checking up, then why do we find this continual advance of the average of theft and pilferage losses? And it must be so, because the insurance companies when they advanced their rates must have known of that.

Mr. KELLOGG. That advance, as I tried to bring out, was at a time when the congestion was so great the cargo could not be properly taken care of.

Mr. EDMONDS. The advance they are suffering from to-day has only come in the last six months.

Mr. KELLOGG. I think, Mr. Chairman, they are now coming to claims that really date back to last year, at least.

Mr. KNOWLES. That is right.

Mr. KELLOGG. I do not think you will find they have claims for this year in any increased quantity—any increase in the number of pilferage claims.

Mr. EDMONDS. Is that being reflected now in the insurance rates, Mr. Rush? Are they in a better condition now?

Mr. RUSH. If such a condition arises, it undoubtedly will be reflected in reduced insurance rates, and it has not come to the attention of the insurance companies that it is so. Naturally, anybody will say when there is less freight shipped and less congestion, there ought to be less pilferage claims than when there is a big rush of goods; that stands to reason.

Mr. CAMPBELL. Over what period of time do you figure? You insured in the year 1920, we will say.

Mr. RUSH. Yes.

Mr. CAMPBELL. And you collect your premiums during that year. Now, over what period of time will those losses average, so that you will know the results of the 1920 business?

Mr. RUSH. It depends on what their destination is, Mr. Campbell. To South America it is very slow; that is the slowest of the lot.

Mr. CAMPBELL. Can you tell now, for instance, your company, what your losses are going to total as a result of the 1920 business to South America, or even for 1919?

Mr. RUSH. No, sir. If I could do that, I would play the stock market. [Laughter.]

Mr. KNOWLES. We know that from $25,000,000 to $40,000,000 worth of goods are in the warehouses at Buenos Aires. Those goods have been there, some of them, for over a year, and have not been accepted by the consignees yet. Therefore, if there has been any shortage in those goods during their stay in the customshouse down there, that claim has not yet been filed, and in all probability if it were filed

now it would not be considered at all because it had not been filed within a reasonable time after the time of delivery by the transporting carrier.

Mr. EDMONDS. Men buying those goods to-day would have to buy subject to what is in them?

Mr. KNOWLES. That is what they are doing and trying to do. The claims from South America are always a long time in reaching here. If the goods arrived and were examined immediately upon arrival, it would take perhaps six months for the claim to be filed in the States.

Mr. EDMONDS. Your company has washed its hands on those claims altogether?

Mr. KNOWLES. After delivery to the customhouse. If we have a package accepted and get a clean receipt from the customhouse and they examine the goods very carefully, naturally they assume the obligation from then on, and it would have to be that way. If we were to assume the obligation while the goods were in the customhouse, we would assume something over which we have no control whatever and which we can not guard and can not watch.

Mr. EDMONDS. Your condition on the east coast is somewhat better than it is on the west coast, where the cargoes are lightered. What do you do, Mr. Rush, with the cargoes down at Buenos Aires, which are tied up?

Mr. RUSH. They would not be liable for a drop in value; they are only insured against sea perils and acts of God, and, to a certain extent, pilferage. In the case of Buenos Aires, their risk terminates within 10 days of the arrival of the goods on shore, so that we have no interest in what happens afterwards.

Mr. EDMONDS. Are not these goods insured by you?

Mr. RUSH. Not by any insurance company, unless it be by a representative of the company down there, against fire.

Mr. EDMONDS. They have not any more sea perils?

Mr. RUSH. They have not any more sea perils; only thief perils and political perils and a few other things. I would like to state, sir, that South America is an awful proposition. I agree with what the steamship people say about the way they handle goods. Handling is not the word; "mishandling" is the word you want to use. They are a pretty tough bunch when it comes to stealing the goods, from the President of the Republic right down. I hope I have not overstated it, but that is my opinion.

Mr. KNOWLES. I do not think you have overstated it. Before I retire, may I bring out one point. Mr. Loines spoke of a prod to make the steamship companies more careful in guarding against shortages of cargo. Both Argentina and Brazil have a system of fining the steamship company double the duty for all shortages existing on delivery of the cargo at their ports, 50 per cent of which fine goes to the customhouse and 50 per cent to the person or officer who discovers the shortage. Now, that in itself is a fine which the steamship company has to pay and is sufficient prod to make them do everything possible in their power to prevent any shortages. The only way that can be corrected is by cable advices or a certified statement from the Argentine or Brazilian consul to the effect a clerical mistake has been made in the papers of the steamer, and that must be

presented to the customhouse down there before the arrival of the steamer; otherwise the fine takes effect for the double duty.

Mr. EDMONDS. How about after it gets on the dock at Buenos Aires, when it is opened up and found to be short?

Mr. KNOWLES. In that case it would not apply, because they would collect the regular duty upon the contents of that case from the consignee at any rate. It is not a question of the steamship liability then; that is a question of the liability of the man who would ordinarily pay the duty. This fine in itself is sufficient penalty, it seems to me, for the steamship company to suffer now.

(A recess was thereupon taken until 8 o'clock p. m.)

EVENING SESSION.

The subcommittee reconvened at 8 o'clock p. m., Hon. George W. Edmonds presiding.

Mr. CAMPBELL. I would like to have you hear Mr. Leakway briefly. Mr. Leakway is the manager of the Bull Co. and has come down here specially to tell you about the Bull operation, because the Bull Co. has been especially complimented and I wanted the committee to see the justification of the compliment.

Mr. EDMONDS. If you will, tell us as briefly as you can what your situation is.

STATEMENT OF MR. A. N. LEAKWAY, NEW YORK, N. Y., REPRESENTING THE BULL-INSULAR LINE.

Mr. LEAKWAY. Mr. Campbell mentioned that the committee would like to be informed on the assessment of our ad valorem charge, which takes off the limitation of liability from our bill of lading. We have always had in our trade a waiving of the limitation of liability as covered by our clause 21 in the bill of lading, providing an ad valorem percentage were assessed upon the actual value of the cargo moving, in excess of $8 a cubic foot for a package measuring less than 12½ cubic feet, or in excess of $100 a package for a package measuring more than 12½ cubic feet.

Mr. CAMPBELL. For that release, what do you charge?

Mr. LEAKWAY. We have been charging 2 per cent in the Santo Domingo trade and 1 per cent in the Porto Rican trade.

Mr. CAMPBELL. Where do you operate?

Mr. LEAKWAY. We operate between New York and Porto Rico; but the 1 per cent ad valorem in Porto Rico has just been changed to 2 per cent by the Porto Rican subcommittee of the West Indies conference.

Mr. CAMPBELL. In addition to waiving the release valuation clause in your bill of lading, do you also provide a marine insurance cover for your shippers if they so desire?

Mr. LEAKWAY. Yes; if any of our shippers do not have the facilities for placing marine, theft and pilferage, and war risk, we will cover them under an open policy carried by our firm from Wilcox, Peck & Hughes, adding on to the bill of lading just the premium charges assessed against us by the insurance company.

Mr. CAMPBELL. That is under an open cover that you keep with Wilcox, Peck & Hughes?

Mr. LEAKWAY. An open cover that we keep with Wilcox, Peck & Hughes.

Mr. CAMPBELL. Will you tell us, just briefly, what system of caretaking you have? What do you do to protect your cargoes from theft and pilferage?

Mr. LEAKWAY. We have two watchmen on the gate, known as gatemen. First, I should amplify by stating that all of our watching is done by an outside concern; not by our company. We employ an outside agency to do our watching. In order to place a check upon that agency, the responsibility for the work they do is placed entirely up to our dock superintendent and assistant dock superintendent, who are both active men on the pier and not spending their time in the office. In order to further check the operation of the watching agency, we employ two gatemen under our own employ—making two men on the gate. We employ from three to five watchmen on the short pier and one roundsman for that pier, except at times when we are receiving no cargo, when we reduce the number of watchmen on the pier in accordance with the amount of cargo on the pier.

The gateman, in addition to supervising the line-up of the teams, are compelled to keep a record of every truck entering our dock, taking the license number of the truck, counting the number of packages on the truck as it enters the dock, and counting the number of packages on the truck as it leaves the dock—one watchman taking the trucks entering and another the trucks leaving. The idea there is to prevent the carrying of cargo off the dock which should not rightfully be taken off. This record is forwarded to the main office and has not only resulted in putting a check on improper taking off the dock of cargo but it has served as well to aid our shippers in disclaiming claims made against them by truckmen for detention on the pier.

Cargo of a special nature, such as silk goods, shoes, and valuable cargo, is received by a clerk appointed by the head dock clerk. About 25 feet inside of our gate we have a crib, or rather, a bin, made of heavy oak from floor to ceiling, with a padlock. That bin is in charge of a special watchman of the watching agency. The cargo is delivered to that bin by our check clerk in the presence of this special watchman, who gives a receipt for that cargo. It remains in that bin until the date of the steamer's loading, at which time it is taken out of the bin, in the presence of that watchman, who is the only one who possesses a key to that bin, and laden on the steamer.

Our regular line steamers to Porto Rico are equipped with a special cargo locker in the forward part of No. 2 'tween decks, which is the portion of the ship immediately in front of the bridge. It is checked into that bin by a check clerk, in the presence of one of the watching agency's men, and we are compelled to furnish them with a clean receipt. If any cargo has been tampered with, the watching agency is responsible for the cargo so tampered with and must reimburse us.

Mr. EDMONDS. How long have you been employing those precautions?

Mr LEAKWAY. We have been employing those precautions for at least the past 18 months.

Mr. EDMONDS. Was this your customary way of handling freight before the war?

Mr. LEAKWAY. As to that I can not answer: I was not connected with the Bull Line at that time.

Mr. EDMONDS. You had a good bit of loss, I suppose, and were compelled to go into this?

Mr. LEAKWAY. It was not so much the loss as it was that particular class of cargo.

Mr. EDMONDS. How long have you been guaranteeing cargo for an extra premium?

Mr. LEAKWAY. That has been in effect ever since I have been with the Bull Line, and I believe has been the practice in the Porto Rican trade and the West Indies trade for many years.

Mr. KIRKPATRICK. What percentage of the shippers take insurance, and what percentage rely upon your unlimited liability arrangement?

Mr. LEAKWAY. We have very few shippers that avail themselves of the unlimited liability. As a matter of fact, one shipper in particular—I think it is costing him money, but he has kept up the practice.

Mr. EDMONDS. You have your own piers at Porto Rico, have you not?

Mr. LEAKWAY. We have a long-term lease from the New York Dock Co., on Pier 27, Brooklyn.

Mr. EDMONDS. Yes; but in Porto Rico.

Mr. LEAKWAY. Do we own our piers in Porto Rico?

Mr. EDMONDS. Yes.

Mr. LEAKWAY. In Porto Rico we lease our pier from the Insular Dock Co. in San Juan, in the Port au Ponce. The dock is owned by the Municipal Dock Co., and all steamers dock at that wharf. At all other ports on the island of Porto Rico there are no wharves; the steamers discharge into lighters sent out by the consignees.

Mr. EDMONDS. Do you have much loss down in Porto Rico?

Mr. LEAKWAY. Our losses have been rather heavy, but I would not say excessive.

Mr. EDMONDS. Do you still have them?

Mr. LEAKWAY. Our losses have been materially reduced.

Mr. EDMONDS. Are your losses in Porto Rico mostly where you lighter?

Mr. LEAKWAY. No.

Mr. EDMONDS. You go to San Juan all right; you do not have any losses there, do you?

Mr. LEAKWAY. Yes; we have losses at San Juan, but I do not believe that that is due to lack of precautions as much as it is due to the conditions in Porto Rico.

Mr. EDMONDS. You have no customhouse officials to bother with there?

Mr. LEAKWAY. We have no customhouse officials to bother with there; no.

Mr. EDMONDS. You have a closed pier?

Mr. LEAKWAY. We have a closed pier.

Mr. EDMONDS. And yet you have stealing going on on the pier?

Mr. LEAKWAY. That I can not say, whether the stealing occurs on the pier or not.

Mr. EDMONDS. If it does not occur there, where does it occur?

Mr. LEAKWAY. It could occur in transit, prior to the time the steamship company signed for the goods. It could also occur after the goods had reached the steamship company's hands; a package might be signed for in apparent good order and condition, just as they are always signed for, and we might also get a receipt from the consignee or his driver for the package in the same like good order and condition, and yet that package might be delivered with portions of the cargo missing. It would be impossible to place the responsibility of where that occurred.

Mr. EDMONDS. Do you know whether it occurs in Porto Rico or at this end?

Mr. LEAKWAY. I am not prepared to state. We have carried on numerous investigations and I believe a lot of the pilferage has occurred prior to delivery to the steamship company's hands, and I believe a lot has occurred after it has left the steamship company's hands.

Mr. EDMONDS. You do not guarantee delivery to the consignee after it leaves your wharf in good condition?

Mr. LEAKWAY. No; but, neverthless, a package can leave our wharf in apparent good order and condition and still part of the contents will be missing. We have had instances where cases have been opened at the consignee's warehouse in Porto Rico and found to contain bricks and old newspapers, some of the newspapers being prints from the middle west of the United States. We have had others bearing the postmarks on canceled letters coming from the Twenty-third Street district of New York, from that post office, and our wharf is located away over in Brooklyn so that it would be impossible for any of our employees to have pilfered that cargo and repacked it with that kind of packing.

Mr. EDMONDS. Well, when that package shows any tampering, of course, you locate it when it arrives at the pier?

Mr. LEAKWAY. If a package arrives at the pier which shows any tampering, that package is refused; the shipper is communicated with and asked to be present at the wharf while we open the package. We had an instance occur just a couple of weeks ago. A shipment arrived at our pier and we had room to believe that the shipment had been either tampered with or had been repacked. We communicated with the shipper and he refused absolutely to have that cargo opened by our employees and removed the cargo from our wharf. We have had another instance of two packages——

Mr. EDMONDS. Is that a case where rags were packed for silk?

Mr. LEAKWAY. No; they happened to be another commodity, not quite as valuable as silk; but the cases showed evidence of having been tampered with—either tampered with or repacked. We wished to open several of those packages as a test, to see what the contents were, and the shipper refused.

We have had other packages arrive at the dock, notably two cases that have come to my mind that were in absolutely perfect order; it was impossible to see that there had been any tampering with them. The cases were rather light. Those cases were supposed to contain shoes. After being opened, they actually contained shoe boxes with pieces of 2 by 4 timber sawed to the length and size of that box. At

the present time, three men are held for trial on those two cases—truckmen of the United States Trucking Corporation.

Mr. CAMPBELL. Where did that shipment originate?

Mr. LEAKWAY. That shipment originated in Boston, Mass. It was shipped to New York and laid in the warehouse, I believe, of the United States Trucking Co. for about 30 days; left their warehouses one afternoon and arrived at our pier the following morning. It actually got by us and got into our special cargo locker. We received a call from the shipper, stating that the police department had picked up these particular shoes—they were a special brand of shoes, bearing the consignee's mark—in upper New York. He asked if we could let him know the number of the truck that delivered those shoes and that we hold the cases. We held the cases to be opened in the presence of the detectives. Now, the special list I referred to in the first part of my talk enabled the district attorney to identify the truck that delivered those cases and that is the only way they located the men who were responsible for that pilferage.

Mr. CAMPBELL. What shoe company was it that shipped those?

Mr. LEAKWAY. I can not recall, offhand.

Mr. EDMONDS. I presume it was that same case that was testified to to-day. Did the trucking company make good that loss?

Mr. LEAKWAY. I can not say. The steamship company was not held liable for the loss. Of course, we would have been liable for that loss——

Mr. EDMONDS. Had you started it on its way?

Mr. LEAKWAY. Had that started on its way.

Mr. EDMONDS. Are you through?

Mr. LEAKWAY. If there are no questions.

Mr. LAWS. Do you charge anything extra for the special care to the shoes and things that you put in this locker?

Mr. LEAKWAY. Not at all.

(The letter referred to reads as follows:)

BULL-INSULAR LINE (INC.).
New York, July 21, 1921.

DR. S. S. HUEBNER.
United States Shipping Board, Washington, D. C.

DEAR SIR: In accordance with a request of one of your colleagues during the hearing last evening, I inclose copies of our freight tariffs applying between New York and ports in Porto Rico and between New York and ports in the Dominican Republic.

Your attention is directed to clause 5 of these tariffs, describing the limitation of liability of the carrier, as well as the option of having this limitation waived by the assessment of additional freight charges.

A committee appointed by the Porto Rico subcommittee of the West Indies conference for the purpose of revising the tariffs to Porto Rico submitted to the conference a revision of rule 5, reading as follows:

"5. Packages exceeding $8 per cubic foot in value, unless a higher value be stated on the shipping receipt and again in the bill of lading, the value of the goods is taken to be the invoice cost plus freight prepaid, but not in excess of $8 per cubic foot with a limit of $100 per package. If a higher value be stated in the shipping receipt and again in the bill of lading and declared to be the basis for freight, the rates of freight herein named will be charged (subject to minimum charge herein named) and plus 2 per cent of the value that is declared in excess of $8 per cubic foot when the package measures less than 12½ cubic feet, and plus 2 per cent of the value that is declared in excess of $100 per package when the package measures more than 12½ cubic feet. Carrier's liability on partial loss of contents of package will be the same

proportion of the value stated above as the partial loss bears to the original contents of the entire package."

This rule met with the approval of the conference and will be incorporated in the new issue of the tariff which we hope to put into effect August 15. When the tariffs to the Dominican Republic are reissued clause No. 5 will be amended as above.

If there is any other way in which we can serve you we shall be happy to do so.

Yours, very truly,

A. H. BULL & Co.,
A. N. LEAKWAY,
Manager West Indies Department.

Mr. CAMPBELL. Now, Mr. Chairman, we have had several witnesses heard that we brought here from the members of the American Steamship Owners' Association. That is about all you can hear in one day. If you want to continue your hearing here, or will come to New York, we will produce men from all of the old-line steamship companies doing business out of the port of New York, and we will show you the same kind of care in the handling of this cargo and the watching of it on board of the ship and in making delivery. I think your investigation is right along the right lines, and I would like to see you go to the bottom of it; but you can not do it here in Washington.

Mr. Loines will now talk to you about protection and indemnity insurance.

STATEMENT OF MR. RUSSELL H. LOINES, NEW YORK, N. Y., SECRETARY AMERICAN STEAMSHIP OWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (INC.).

Mr. LOINES. Mr. Chairman, I am the secretary of this American Steamship Owners' Mutual Protection and Indemnity Association of which you have heard some caustic reference during this hearing from the representatives of the underwriters. I want to tell you, briefly, what this association is and stands for.

Mr. EDMONDS. This is the American Ship Owners' Association?

Mr. LOINES. This is the American Steamship Owners' Mutual Protection and Indemnity Association and has no connection whatever with the American Steamship Owners' Association.

Mr. EDMONDS. I thought you said the American Steamship Owners' Association.

Mr. LOINES. You will find in the July number of the Marine Review a rather full account of the history of protection and indemnity, if you are interested in incorporating that in your records. I will say, briefly, that most maritime countries have found it a convenience to deal with their marine liabilities, beyond those which are covered in the ordinary marine policy—the marine policy covers only the shipowner's liability for collision—in these mutual associations to which the members contribute in proportion to their tonnage, in consideration of the protection from liabilities incidental to the operation and management of the steamers.

I will leave with you a copy of the extracts from the by-laws and a summary of the nature of the risks covered; also a copy of our instructions to masters and lists of agents.

(The summary of the nature of risks covered is as follows:)

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (INC.).

NATURE OF RISKS COVERED.

Owners' liability, in respect of the vessel insured, for—

1. Injury to any person, including laborers handling cargo, members of crew, passengers, persons on another vessel, or to any other person, including burial expenses, not exceeding $100.
2. Damage to other vessels by collision, to the extent of one-fouth of the amount, when this risk is not covered in hull policies.
3. Damage to other vessels and their cargoes otherwise than by collision, including damage by wash of steamer, crowding other vessels ashore, causing two or more other vessels to collide, etc.
4. Damage to docks, piers, jetties, breakwaters, buoys, cables, and other fixed or movable objects, and to property on docks or piers.
5. Damage to cargo, or responsibility for cargo carried or to be carried, including shortages and overcarriages, exclusive of shortage consequent on B/L guarantee. Subject to a stated deduction on each voyage.
6. Expenses of removing the wreck of the vessel.
7. Repatriating members of the crew.
8. Extraordinary quarantine expenses, by reason of outbreak of plague or other contagious disease on the vessel. Subject to deduction of $200.
9. Illness of passengers or seamen, including burial expenses up to $100.
10. Smuggling, mutiny, or unfounded claims of crew.
11. Customs and immigration fines and other fines arising from neglect or default of captain or crew.
12. Cargo's proportion of general average, if not otherwise recoverable, as in cases where the G/A is brought about by the vessel's negligence.
13. Legal and other expenses incurred in relation to any of the above risks, or when authorized in the interest of the association.

This American association was organized on February 20, 1917. Prior to that time American owners had been obliged to cover their risk through British associations. The British associations, I may say, had existed since 1865 or thereabouts. Norwegian and Swedish associations also existed for the protection of steamers of those nationals. Before we got into the war our owners found it an inconvenience to be subjected to the rules laid down for the conduct of the English associations, so that an association here on similar lines became essential, and at the demand of a large number of shipowners we incorporated. At that time we had a membership consisting of 1,000,000 gross tons. We got into the war and after the Government requisitioned a large part of the tonnage our directors extended the cover of the association to take care of the Government's interests in the requisitioned vessels, and subsequently, when the German steamers were taken over, the Shipping Board found it convenient to have these matters dealt with through our association, and so we took in, little by little, the tonnage of the Shipping Board. We now have a tonnage of about 8,000,000 tons.

It is our duty to investigate and handle all these claims made against the owner. You will see from the list that there are at least a dozen different subject matters which we cover. The bulk of them ars included in the cover of lose of life, personal injury, and cargo claims. We cover not only theft and pilferage, but damage to cargo, claims for overcarriage, and other responsibilities incidental to the carriage of cargo. All of these claims that occur in any manner, after being investigated, handled, setttled, etc., are distributed over the entire tonnage pro rata; each member pays his share of the year's expenses in proportion to the entered tonnage. We are, therefore,

strictly a mutual association. Our function is service more than insurance; we are a service organization. We relieve the individual shipowener of the necessity of maintaining a considerable staff to do a lot of the rough work of investigating all these cases, and by having the work concentrated and conducting it on a large scale we are able to render this service quite economically. We have a staff of more than 100 in our New York office and we maintain offices also in San Francisco, Seattle, Boston, Philadelphia, and Baltimore, and we have agents in other ports of the United States and in all of the ports of the world.

Mr. EDMONDS. Who is the president of your company?

Mr. LOINES. Mr. Alfred Gilbert Smith, president of the Ward Line, is chairman; Mr. Wm. A. Thompson, of the Texas Co., is deputy chairman. Our other directors are Maurice Bouvier, of the Grace Line; Mr. C. W. Jungen, of the Southern Pacific Co.; Mr. Tomlinson, of the United American Line; and Mr. W. B. Keene, acting director of operations of the Shipping Board.

These claims after being investigated are passed upon by our directors at their monthly meetings, and our experience in dealing with the claims is availed of to secure methods of prevention. Early in the war, almost as soon as war started, when the shipments of cargoes in large bulk began transatlantic, we found it desirable to have a special survey of the stowage of those boats. New kinds of cargoes were being carried which many of the owners did not understand. We employed two surveyors who examined the stowage of all ships out of New York, with a special view of detecting errors and preventing claims before they occurred. A little later we took on ourselves the responsibility of looking after the seaworthiness of many of those vessels, and we have a retired naval officer and a retired Coast Guard officer acting as surveyors, who give their special attention to matters of seaworthiness of doubtful vessels. We render a similar service in San Francisco and other ports, where we call upon outside experts, not in our employ, to render a similar service on special occasions when it is necessary, so that the owner is able to call upon us and have the benefit of expert advice on a good many of those matters which, if they are not carefully looked after—and many of the owners can not maintain the staff to look after them—would otherwise let him in for claims.

We follow up our members from time to time with the results of our experience and draw their attention to things that are not properly done, and send out circular letters from time to time to keep them toned up. I do not wish to burden the record, but I will just mention the subjects of some of those circular letters—overloading; poor stowage too near bulkheads; deficient tarpaulins; temporary bulkheads and shifting parts; ventilators; steam pipes and fire injectors; hose; overloading of tank steamers. I mention those as illustrative of the kind of preventive work which we do. Please bear in mind that we have in our association nearly 90 per cent of the seagoing tonnage of the United States, so that our function represents, in a way, the collective effort of the shipowners to look after some of these functions.

Mr. EDMONDS. Particularly in reference to cargo and in handling cargo, I suppose?

Mr. LOINES. And also, I have not mentioned matters in connection with the loss of life and personal injury, where we turn to other things.

To come down to this specific question of theft and pilferage which is of special concern to you, I want to say that we took hold of this subject some time ago. We noticed early in 1919 that things were going rather badly and, about June, 1919, we set about investigating the cause of theft and pilferage. I assigned one of my staff, who had just been released from service on a transport and who had qualified during the war as a mate, to certain of the coastwise lines around New York. I shipped him as a quartermaster on these boats so that he would be able to watch the crew. The result of a number of voyages showed that there was a certain amount of petty pilferage going on among all of the crews at that time. It did not run into any serious figures. The prohibition law had not then gone into effect, and the chief subject of the crew's attention was such liquids as there might be in the hold of the vessel. We found they got access to the hold through the fireroom doors. We stopped that by notice to the various owners to have a special watch on the crews. We found they were not only interested in liquids but also in food supplies and in wearing apparel.

Mr. EDMONDS. Did you find any of those steamers carrying 4 per cent beer down there during the hot weather that you can recommend to us? [Laughter.]

Mr. LOINES. Well, I may have to go under the English flag for that, if you are not careful. The pilferage on the steamers was a small affair. Pilferage on the docks was more serious. We assigned to the docks, as members of the checkers' unions—we got men into these unions and had the conditions on the docks watched pretty carefully through them. There was evidence of a good deal of connivance between the checkers, longshoremen and the truckmen. We caught several attempts to pull off large thefts on the docks, but we met with great difficulty in getting any convictions. We discovered, however, what was going wrong and, as a result of a number of investigations on different docks and trails, we got a special detective service on the job for a number of the principal docks in New York and gathered together a good deal of evidence with the hope of securing some important convictions.

We became satisfied that the really serious trouble in the port of New York was the fences, which have been alluded to this afternoon by Mr. Senecal, of my office. That, we were convinced, was where the big thieving was being done. The difficulty of securing convictions I need not enlarge upon; but to stop that was something which was very difficult for the shipowner to do. It was outside of his control; the "fence" work was done before the steamer got the goods. It was the kind of thing that was alluded to by the last witness—the emptying of a box of expensive wearing apparel, of shoes, and filling it with other goods. We have had advices that the people who deal in things like silks have been making large fortunes by organized theft and pilferage of cases. We have succeeded in getting some minor convictions. Unfortunately, the results were not very sweeping. We did, however, succeed in this: We insisted that our members should reorganize their watching service. Before we got into the war the work of watching on these piers was done by

old men, who worked 12 hours a day and got about $2.50 wages. It was an easy job and there was not very much that they had to do. As the thefts began to increase it became evident that they were hopelessly unable to compete with them. We insisted that the owners should employ competent watchmen, young, athletic, working eight hours a day and getting a man's pay. We got most of the leading companies to rearrange their watching service.

This was about June of 1920 that this work got well started. As a result of that the thefts that occurred on the docks were unquestionably very much reduced. The watching service, however, could not control the thefts from packages that occurred before they got into the shipowner's possession. Now we state that there has been a great improvement in the results with respect to theft and pilferage. That has been testified to this afternoon by Mr. Senecal, who is immediately attached to and in contact with that work. I mention these things to show that the shipowners are alert and are doing their utmost to deal with this condition.

I want to draw your attention to the fact that the peak of this trouble was during the years 1919 and 1920. Since 1918, at the beginning of our second year, our tonnage increased from 1,000,000 to 8,000,000. Our merchant marine was not, early in 1918, highly equipped in personnel. Our merchant marine had been largely a coastwise affair up to that time, with a few special lines engaged in regular trades. We had suddenly cast upon us the burdens of a shipping nation striking out in new trades, in new directions, with personnel inadequately equipped, at the best, to deal with new conditions. We had all the excitement of war conditions. We had the best men from all of these companies being taken away for service. That growth of the shipping business, under normal conditions, would in itself have been a fearful task to cope with and to organize competently. In addition, however, we had these war conditions.

Another point I should call your attention to is that the shippers were also in themselves a war growth in large measure. A great many new firms sprung up that were not used to doing foreign business. Some of them have testified to-day, and the ignorance of shipping practice and of shipping law they have exposed at this hearing is a very fair indication of one of the conditions which the shipowners have had to cope with.

Mr. EDMONDS None of the firms that testified here to-day——

Mr. LOINES. I do not mean to-day; I mean during this hearing.

Mr. EDMONDS. You mean the shippers.

Mr. LOINES. I mean the shippers; yes. I refer particularly to the instance of the shoe manufacturing concern, which undertook to send a large and valuable shipment of shoes to Habana by way of Newark.

Mr. EDMONDS. Let me ask you something. Do you have any of these new concerns in your association?

Mr. LOINES. We did. We had them in our association as operators of the Shipping Board vessels. We had to look after the operators of these Shipping Board vessels, and we undertook the work of instructing a good many of them in some of the fundamentals of their business. We sent our men around to talk to their operating men, not finding it sufficient to circularize them, and we taught them some of the things they had to do.

Mr. EDMONDS. Did their experience lead to greater losses and more troubles than some of the old-line companies with the existing war condition?

Mr. LOINES. Obviously their experience was more costly than that of the old-line shipowners, who had more knowledge of their business. They made more mistakes.

Now, consider the problem of personnel of all of our shipowners during these three years, which I call incidental to the war, when our heavy shipping was done—1918, 1919, and 1920. To begin with, as to the seamen and officers we had in 1915, the La Follette Act had undermined the morale of the seamen. In addition to that we had the necessity of a large new personnel in the service. The union rules for the engineers and officers were a serious handicap. I want to give one illustration of that, because it came under my personal observation: I was on a board which investigated the cause of the accident to the steamer of the Munson Line that turned turtle at her pier, the *Moccasin*. We were satisfied as a result of our investigation that that accident would not have happened if it had not been for the rule of the engineers' union that no engineer of the steamer should be obliged to sleep on board at night. They compelled the owners to put a temporary engineer on board. The engineer who occupied that position that night did not know the location of the valves in this ship and was unable when the steamer began to give a slight list to do what was needful to restore the trim of the vessel. No shipping company in Great Britain, and I imagine many of our shipping companies now are free from this restriction, would ever think of allowing their vessel to remain at the pier overnight without an engineer on board who knew her. That is an instance, and a rather striking one, of the difficulties of personnel with which our owners had to cope. I wish I could give you a list of the claims that we have had to pay, arising during the war, resulting from damage to dock in consequence of the engineer officers putting the boat full speed ahead when they got an order full speed astern. If we had 1 such case, we had 50.

Mr. EDMONDS. Is that in accordance with the union rules, too? [Laughter.]

Mr. LOINES. That I attribute to the morale of the material we had to work with. During that time the shipowners had to get whom they could. As another example, 30,000 stevedores, we learned from Commissioner O'Connor this morning, were taken into war service. The shipowners, the master stevedores, would get anybody they could at any price to do the work. In European ports there were similar conditions. At Harve, the conditions were almost as bad, if not worse, than they were at New York. I have referred to the conditions in regard to the watchmen.

These were some of the things, Mr. Chairman, that I think you should keep in mind in forming your judgment of the shipowner's share of responsibility for these losses from theft and pilferage, which are the subject of this inquiry. Remember, also, that the conditions existing in foreign ports during the war were similar. Most of our shipments during those years were to the Continent and to the United Kingdom. That is where the heaviest losses occurred from thefts. Now all the disorganization and upheaval of the service, all

the new service, and the constant changes in personnel, gave the predatory nature its chance and contributed to the breakdown of the morale, which is admitted by almost all of the witnesses here as a large part of the trouble.

Mr. EDMONDS. Did you ever find a case where the captain and any of the officers were in collusion with men breaking into packages on the ship?

Mr. LOINES. I have known where officers were ready to accept some of the drinkables that came up from the cargo.

Mr. EDMONDS. Anything else besides drinkables?

Mr. LOINES. Yes; I have known of a few cases where officers had taken silk stockings and ladies night gowns from the cargo and gone ashore with them. Those things, however, are minor matters, Mr. Chairman. The pilferage done by the crew bulks very small in this large problem that you are considering.

Now, I find the time is going very fast, and I should like to comment in detail on the points made during these three days' hearings, but I must cut it short. What is the remedy suggested for all this trouble? The remedy is suggested by the underwriters and by those few shippers who have testified—because I consider that with the exception of the packers and some of these associations of manufacturers that the shippers who have had serious complaints have been very isolated and unimportant in amount—the suggestion made is to put the burden on the carrier. Give him an interest in these claims.

I have forgotten to state in my summary of our cover an important fact as to the interest of the shipowner. On every voyage the shipowner bears the first $500 on the cargo claims, from whatever cause occurring. That is known as a deductible average. The association pays only the excess of that $500. The shipowner, therefore, has a direct interest, as far as our association is concerned, in keeping his claims down. It is suggested that the $100 clause should be cut out.

Mr. CAMPBELL. When you referred to the shipowner having a direct interest to keep the claims down, you mean the particular shipowner owning that vessel?

Mr. LOINES. The shipowner owning that vessel.

Mr. CAMPBELL. I did not follow the first part of your statement. Did you explain in detail the character of your association in the beginning?

Mr. LOINES. Yes. Now the suggestion is put forward by our underwriter friends that this $100 clause should be cut out to give the carrier an interest, as if the carrier did not already have a sufficient interest. It has been testified to by Mr. Ryon, of the I. N. M. Co., that 80 to 90 per cent of the outward cargo from New York consists of packages valued at less than $100. I would like to remind you, too, that that $100 valuation at the present time includes a large number of commodities, such as flour, wheat, cereals and cereal products, crude metals, foodstuffs in general, chewing gum, oils, cotton, sugar, coffee, and other products which bulk largely in our trade. If the shipowner has to pay the first $500 of claims on every voyage as an individual, if he has to pay his share of all of the claims for which his fellow shipowners are liable on the first $100, which makes him pay his share of 80 to 90 per cent of all the cargo

carried, I ask you in fairness if he has not already a sufficient interest in this subject to lead him to take whatever precautions he might to prevent pilferage and theft?

Mr. EDMONDS. Does that include the paragraph 4281 articles also—your limit of $100 in your bill of lading—precious metals, gold, diamonds, and so on?

Mr. LOINES. No. We have special provisions in our by-laws for the shipment of precious cargo.

Mr. EDMONDS. How about the bill of lading?

Mr. LOINES. That depends on the individual bill of lading of each firm.

Mr. EDMONDS. That is handled as a separate proposition by each company as an entity by itself; is that the idea?

Mr. LOINES. Yes. Now, Mr. Chairman, as to the magnitude of these thefts and pilferages, we had some figures given us by the first underwriter who testified, Mr. Rush, as to the thefts and pilferages by sea and also by rail, experienced by his company. Those showed that in the years 1917 and 1918, the loss in the sea shipments amounted to $78,000 and $108,000, respectively; whereas, by rail, the losses amounted to $441,000 and $1,202,000, respectively. It is contended by the underwriters that if they could eliminate this $100 limitation from the bill of lading, and could eliminate some of these other clauses that they find objectionable, that would prevent some of these pilferages by giving the carrier an interest. They have let the cat out of the bag by giving us these figures of their losses by rail shipments. In those rail shipments, they have had all the clauses in the bill of lading that they wanted. Nevertheless, the theft and pilferage went on. It was considerably worse in its total than the theft and pilferage at sea. Now, they want us to believe that if this $100 valuation clause is cut out, theft and pilferage at sea will be stopped.

Mr. LEHLBACH. Are there any figures that would show the value of the shipments by rail during the period covered and by sea during the period covered?

Mr. LOINES. I am only giving Mr. Rush's own figures, which you have.

Mr. LEHLBACH. I should imagine that the volume of the traffic by rail within the United States is somewhat larger than the traffic on ships out of ports of the United States. Whether there is a greater ratio in the volume of shipments than the ratio of the respective losses, of course, I do not know.

Mr. LOINES. I take it it is his insurance in the shipments, the insurances placed by him. You will have to ask him to explain his own figures.

Now, the real reason, Mr. Chairman, why the underwriters want to eliminate this $100 clause, I think, is that it not only restricts their recovery of theft and pilferage claims, but also restricts their recovery of a good many other claims from the carrier. They issue their open policy for cover against all marine risks from warehouse to warehouse, and under this policy they cover marine perils, fire, and a large number of other risks, besides these various risks for which the carrier is liable. I have never heard an underwriter admit that if any change were made in these clauses that he would give the shipper any reduction for the small number of claims proportionately that he would recover from the carrier. The bulk of the claims that

the underwriter has to pay comes from the sea perils. The claims against the carrier are a drop in the bucket and would cut no important figure in his premium. The shipowner, on the other hand, is much more affected by these claims, and they cast a heavier burden on him.

The cost of P. & I. cover, I should mention, at the present time is approximately 60 cents a ton on the gross tonnage of the ship, so that on a steamer of 8,000 tons, which is a fair-sized cargo steamer, the cost is about $5,000 a year for these liabilities distributed over our whole tonnage.

Having had some knowledge of the British shipowners' clauses, we are naturally anxious to keep ourselves as close as possible to the British standard, and I am glad to say that our experience so far has compared on the whole quite favorably with the British.

Mr. LEHLBACH. Is that because they are more liberal in settling?

Mr. LOINES. Well, that might be one reason, Mr. Chairman. Another reason might have something to do with the management and the scale on which we conduct our operations and the preventive measures which we have taken and the size of our organization as compared with theirs, which is very much smaller.

Now, the remedies, Mr. Chairman, it seems to me, are not to be found in legislation. They are rather in education, and they are in toning up the morale of our service, not only of the personnel under the shipowners' control, of the seamen and the stevedores and the watchmen and everything that lies within the scope of the shipowner, but they are also with the shipper. The shipper, in the first place, has not made the study of the packing of his goods that he should have made. In this connection I want to incorporate in the record a short paper by Mr. C. C. Martin on One Essential of Successful Exporting, and I want to leave with this committee Mr. Martin's book on export packing, which is a very thorough and scientific study of the subject. It was referred to by Mr. Robinson, who, I wish to say, has made to my mind the most constructive suggestions for improvement that have been submitted to your committee in the direction of toning up the morale of the service.

(The paper submitted for the record by Mr. Loines is as follows:)

ONE ESSENTIAL OF SUCCESSFUL EXPORTING.

[By C. C. Martin, National Paper & Type Co.]

The title of this paper might well be "The Cinderella of Export," for the subject of our discussion is export packing, the lowly, the misunderstood, the ignored. Yet, let us always remember that every dollar wrongly saved on our export packing means hundreds in the pockets of our foreign competitors. Neglect of this matter on the part of American shippers cost the marine insurance companies in 1920, for theft and pilfering losses, the very respectable sum of $20,000,000, and we are told by certain unappeased critics that even this is too conservative an estimate, for a number of companies during the past year paid out, individually, more than $1,000,000 as a result of ignorance or indifference on the part of shippers. However, that greater loss, the direct result of poor packing, which is expressed in lack of prestige abroad and orders that do not repeat, mounts up, we are confident, to several times the maximum figure that has been mentioned.

Doubtless the reluctance to consider duly and justly the export packing problem is the result of the fact that the popular imagination conceives this to be a problem of amazing simplicity, and we fear that the same imagination looks upon the subject as a mechanical one, restricted in its skill and crafts-

manship to the carpenter's saw and the carpenter's hammer. Yet what we need most emphatically is a reformation of this popular imagination, for a man who is competent in the matter of export packing is one of the best educated individuals in export trade. This man would have to know a great many things, of which the following are a few:

Our expert must be fundamentally informed on the subject of tariff laws and transportation conditions, both maritime and terrestrial, throughout the world; he must know a good deal about stowage and the mechanics of shipping, and must not be in doubt regarding landing problems in different ports, methods of handling goods, and commercial practices throughout the world; his must be a highly developed and sufficient knowledge of different woods and the technique of case and box construction; familiarity with waterproofing methods and varied practice in the protection of commodities must be required, as well as expertness in the matter of the holding power of nails, center of gravity of shipments, reduction of cubic displacement, and so on. Our expert must also be informed about marine insurance, for he must know when to insure against special risks and when not, and he must be acquainted with the niceties of particular average. The varied knowledge that has been advised as a requisite in this circumstance is not an exaggeration but is merely a superficial statement of what the men in our packing departments should know and what they will know eventually, when we can with confidence and truthfulness say that we are prepared to pack our goods with that excellence and sufficiency which has characterized the work of certain of our foreign competitors.

In view of the foregoing it is all the more surprising to note the false satisfaction that a considerable number of the exporting fraternity seem to have with reference to their export packing methods, and one need only test the matter a very little way to become convinced of the fact that many American concerns interested in and engaged in foreign trade have yet to consider, even in a preliminary way, the various phases of this all-important problem. Yet when we think that no matter how pleasing our terms, no matter how satisfactory our promises of delivery, no matter how eminently suitable our goods may be to the needs and individual standards of the foreign buyer, all of these factors are of relatively slight importance unless the shipment gets into the possession of the consignee in good shape, so that he may place the merchandise on sale or in use after the long months of waiting. No exaggeration is present when we state that export packing, its sufficiency and its excellence, is a link in the chain of foreign trade which must be made of adequate and sterling value if that chain is to do its work.

Hope and forethought to be of constructive value must be based upon knowledge, and we as American exporters can with confidence feel that the progress made in American exporting during the past few years will continue to be made, and that in this matter of packing we shall do our part. For let it not be supposed that we can not show names and examples in the roll of exporters that stand for the very finest sort of work in the matter of export packing. The great volume of discord should not permit us to lose sight of the true harmony that is present, and we can point with pride to houses that have done and are doing all that could be expected either from the standpoint of experimentation or that of practice in the matter of preparation of goods for overseas shipment. Many examples could be cited of concerns that have neglected no opportunity to make their export package as sterling as the goods they contain; that have continually checked factory records with agents' and consignees' reports; that have employed the finest engineering talent for the purpose of designing and perfecting export packages; that have carried through lengthy tests in laboratories and in actual practice to determine weakness or strength of a particular container; that have shipped goods to foreign countries and shipped them back so that the factory itself might see the true condition of affairs; that have sent men of experience and ability to watch the shipment en route, to note everything that happened to it, so that knowledge of the matter might be perfected. We have developed export packing progress in many of our standard lines that could hardly be improved, and we have the right to be proud and satisfied with much of the work that has been done. However, for those who wish to begin their work simply and sincerely, there is no factory so small that it can not test its shipments in its own back yard. I know of a factory in the Middle West, in fact, I know of several factories in the Middle West, that have begun their experimentation at home, and this beginning consists of dropping the package from various heights for the purpose of noting

the effect of the fall, both upon the package itself and upon the contents. I know of one concern that takes its package up several stories and drops it through the elevator shaft, while there are others that limit the fall to more modest altitudes—for example, dropping the package out of the first or second story window.

One of the most important things in the matter of export packing is to follow strictly the instructions of the consignee. If these were followed, a large proportion of export packing failures would cease to exist; and if the instructions regarding marks, division of the contents of the packages, and so on were obeyed, the problem would be greatly simplified. The wrong marks or incorrect marks may cost your consignee a great deal in lost time and money, it may even lose him the shipment; wrong numbers may cost a fine in the customhouse of 25 per cent of the duty; plastering the case with all sorts of advertising matter that indicates the contents of the case, may cost the marine insurance company a great many thousands of dollars for losses due to pilfering; while instances of goods packed in heavy containers for countries where duty is levied on the gross weight, or cases of goods packed in fragile and light containers where duties are levied on the net weight are too common and too discouraging to be mentioned. In this matter of following instructions there is almost a classic case of failure to follow instructions on the part of an American manufacturer who received an order for goods composed in part of metal and in part of wood, and who was told to ship these goods 300 pounds to a case, the metal goods in one case and the wooden goods in another. This manufacturer, filled with initiative and the desire to be agreeable, decided that his customer's instructions were faulty, and that matters could be greatly improved by shipping one case of 600 pounds. However, he subsequently found, to his great surprise, that only 300 pounds could be transported readily over the rough roads of the consignee's country, that there was a relatively high duty on metal goods and a relatively low one on wooden goods, and that when both kinds of goods were packed in one case the higher duty was assessed on the whole package, and also that the customhouse allowed a certain weight for tare which would not have been exceeded by either one of the two cases, but which was exceeded by the case weighing 600 pounds.

Export packing is a question of such very great complexity that in a paper of this length it is only possible to touch upon a very few of the essential points. One of these points is the construction of boxes and crates and the technique of nailing and strains. To be sure, the ideal export container is that which will deliver the goods to the foreign customer in perfect condition at a minimum cost, but the rub consists in determining just exactly what kind of a package will do this work.

In this matter is must be stated immediately that comparatively little domestic packing can be used for shipment abroad and a new and fresh start must be made in the construction of the foreign container. Here the type of box selected, the species, quality, and size of lumber used, the method of nailing and joining, the kind of strapping and the scheme of packing the contents in the box, all vitally affect the sufficiency and serviceability of the export package.

The quality of the lumber as regards seasoning and defects is a vital factor, for boxes made of green lumber lose a large part of their strength in drying out, owing chiefly to the loosening of the nails because of the shrinking of the boards. The character of the defects in boards, such as knot holes, openings in the grain and so on, are of the utmost importance and consequently the the greatest care should be used in selecting the wood for foreign packing cases. Likewise the size of the lumber used, its thickness and width are of great moment, and the manner in which the parts of the case are nailed together determines in a large measure the ultimate strength of the package. Often the addition of a few correctly placed nails will increase the strength over 100 per cent, and it may be generally stated that improper and inadequate nailing are two of the most common faults in export containers. The metal strapping of export boxes is a prime factor; practically all export cases, no matter what their size, weight, or destination, should be metal strapped, for properly applied strapping greatly increases the strength of the container and is also of material assistance in preventing pilfering. Waterproofing is a science in itself, and contrary to the general understanding, it may be said that a tin-lined case does not always guarantee by any means that the goods are protected from moisture.

In the construction of crates we have a problem of considerable difficulty for the reason that the construction of crates has not been standardized as has that of a case, and it is probable that greater loss is occasioned by excess cubic

measurement in crates than is true for boxes. In crates the method of joining is absolutely vital, and possibly more than for boxes the importance of proper nailing and proper bracing must be taken to heart.

With reference to bailing we feel that the possibilities of this method of packing have not been fully appreciated, but as time goes on practice will probably show just how useful the bale is as a labor and time saving factor. The War Department states in one of its bulletins, that over $50,000,000 was saved during the war by bailing various textiles instead of packing in cases, the experience of the War Department being not alone interesting from the standpoint of the actual saving in money, but also from that of the variety of materials that were so packed, for bales went overseas containing underwear, hosiery, sweaters, gloves, coats, trousers, towels, blankets, tents, shoes, hardware, and so on. The advantages of the bale are numerous; we have economy of the packing process as compared to that of casing, the saving of some 97 per cent in tare, great reduction in warehouse space, saving in dunnage, material reduction in cost of the packing, ease of handling, facility of transportation, and so on. It is quite possible that by making arrangements with the consignee many of our overseas shipments now cased could be baled, for that this method is entirely satisfactory with a very wide range of commodities, experience during the war clearly demonstrated.

Conditions in foreign countries must always be clearly kept in mind by the export packer for port facilities or lack of facilities, climatic conditions and means of transportation by land have an important bearing on the whole problem. It may well be that the shipment is discharged into a lighter in an open roadstead, with the accompanying hazards, and that this first peril is followed by others on land in the form of primitive facilities for transportation with all the resultant exposure to the elements and possibility of injury to case and contents. The man who is familiar with the conditions in foreign ports and countries can frequently effect important savings in the character of the package and can minimize materially the peril of the goods.

Of prime importance also in this matter is a knowledge of customs requirements for these may condition the method of packing, and they have a very important bearing on the character of the case itself. It must be appreciated that there are a great many different ways of assessing tariff duties and that the method used depends on the point of view of the foreign government. Duties may be on an ad valorem basis as in the United States; they may be specific or on the weight and measurement of the goods as specified in the tariff; they may be official, which is arrived at by taking an arbitrary basis of valuation; there may be a number of different weights specified, such, for example, as in the case of Brazil, where we have gross weight, legal net weight, and actual net weight. All of these tariff provisions have an intimate bearing on the character of the packing and the packing expert must be well informed in the premises.

At the beginning of this paper attention was called to the millions lost annually by shippers and insurance companies as a consequence of pilfering, and in again mentioning this important consideration it seems more or less a duty to in a measure relieve the steamship companies of the onus that has been placed upon them. It should not be supposed for a moment that because a case of goods reaches a foreign port with a portion of the contents missing that this is due to pilfering aboard ship. The minute goods leave the factory doors, even before they leave the factory, the pilferer may begin to get in his clever hand, and from this time on opportunity is abundant for tampering with the case. No way has been found to physically prevent pilfering, as it would hardly be practical to send goods forward in burglar-proof safes, but it is possible to use various forms of safety slips and nails that will instantly show that a case has been tampered with.

No discussion of export packing would be complete without mention of the Forest Products Laboratory, of Madison, Wis., for the work that the laboratory has done in experimentation and research has been of incalculable aid in the advancement of the science of export packing. During the war the laboratory saved the Government millions of dollars by redesigning packing cases for overseas shipments, and the cooperation the laboratory offers the public in the matter of solving packing problems can not be too highly praised. All good friends of this branch of the Forest Service of the United States Department of Agriculture were more than pleased to receive a card from the director a few days ago stating that Congress had increased the laboratory appropriation some $100,000. Truly a well-merited recognition of worth and accomplishment.

There have been three points of chief importance that I have tried to emphasize in this paper. The first is that export packing is as important and as much of a science as any other phase of export work. Second, that the man who has qualified himself to be an expert in packing bulks large in the capacity and talent of foreign trade. Third, that there is gratifying and convincing evidence that appreciation of the first two points is rapidly becoming general throughout the United States.

I believe that the shippers can go a long ways toward the prevention of theft and pilferage by constructing their packages so that they inevitably show on observation the effect of having been opened. The use of certain kinds of nails and the shape and construction of the package, which is dealt with in detail by Mr. Martin, I believe, from a careful study of that book, will be useful to your committee, and I take pleasure in leaving it with you.

Mr. LEHLBACH. May I ask a question at this point? I believe it is your view and the view expressed here by the shipowners generally that the large proportion of the theft and pilferage that occurs to shipments from the time that the shipment leaves the rail carrier until its delivery to the consignee abroad occurs while the property is in the hands of truckmen, draymen, or lighter men, and before it actually gets to the side of the vessel.

Mr. LOINES. True.

Mr. LEHLBACH. I think I am fair in saying that you consider a majority of the cases of pilfering and theft occur at such times and not while the goods are in the hold of the vessel?

Mr. LOINES. Yes. I think serious losses occur on the docks.

Mr. LEHLBACH. You heard the testimony of the gentleman from Baltimore with regard to the experience at that port with respect of theft and pilferage. Do you think that there is a decided difference between the amount of such losses, in view of the fact that they occur at times, as you have described, in ports where it is possible to run the rail delivery alongside the steamer dock and load from the rail practically into the hold of the ship without the intervention of lighterage and cartage and trucking? Do you think that a very large element of theft and pilferage would be eliminated in a port of that kind, as compared to a port where lighterage and trucking and other means of transportation are necessary from rail to ship?

Mr. LOINES. Obviously; the reduction of one important stage in the transit would reduce the likelihood of theft in the total journey.

Mr. LEHLBACH. The use of such a port, as against the port requiring lighterage and truckage, would be a decided economy to the shipper?

Mr. LOINES. Other things being equal.

Mr. LEHLBACH. Other things being equal, you would say yes?

Mr. LOINES. Yes. Mr. Chairman, as I say, I believe that legislation is not essential to deal with this question. I think that it can be remedied by concentrating effort and by cooperation on the part of shippers and shipowners; and I am sure that the shipowners are glad to have the benefit of these underwriters' suggestions who, by reason of insuring, are cognizant of the troubles of their shippers. But we think that the matter is one to be worked out primarily between the ship owner and the shipper direct.

I won't intrude any further on your time.

Mr. BURCHMORE. May I ask one question: You have heard a number of these clauses in bills of lading reciting all the conditions

under which the ship would not assume liability; are you able to say, from your experience, whether it is a fact that the better liners as a rule do not avail themselves of all these rather extraordinary release clauses and saving clauses?

Mr. LOINES. What do you mean by extraordinary clauses?

Mr. BURCHMORE. I mean these clauses that have been read here reciting the numerous circumstances.

Mr. LOINES. You mean the clauses in the Norwegian bills of lading?

Mr. BURCHMORE. Yes; and the corresponding clauses in American bills of lading. I do not mean to ask you to express your opinion as to the propriety of the clauses, but whether they are not generally waived when they do not have much doubt as to the claim?

Mr. LOINES. I should rather say they were generally valueless to the shipowners, because of the fact most of them are brought into operation by negligence and are, ipso facto, void. That point has been made during the discussion of these clauses.

Mr. LEHLBACH. Then why keep them—to safeguard any such contingencies when those things happen without negligence?

Mr. LOINES. I think a good many of them could be dispensed with, Mr. Chairman.

Mr. LEHLBACH. I suppose it is like common law pleading; they have always been in and so you continue to put them in?

Mr. LOINES. The carrier is always glad to have some help from the burden of proof.

Mr. KIRKPATRICK. Take the clauses providing for notice of loss and the commencement of suit and notice of claim within a certain time. Do you find that the majority of the companies are disposed to waive those clauses, or do they insist on them?

Mr. LOINES. I think those clauses are very often waived. I know it is the attitude of a large number of companies, when a claim is sound on its merits in other respects, they do not insist on those clauses. They are necessarily there for the carrier's protection, because a great many shippers take advantage of the carrier by not putting in a claim until a time when it is impossible for the carrier to get the facts. It leads the carrier into a position where he can not defend himself. It is right and just that there should be a reasonable time. Now, our courts hold that, in certain circumstances, where the conditions make it unreasonable, the clause is not valid.

Mr. KIRKPATRICK. Yes.

Mr. LOINES. You have got to rely on the judgment of the court.

Mr. KIRKPATRICK. Do not they really use those clauses very much as an insurance company would use a technical requirement in an insurance policy where, for instance, they may suspect a fire to be of incendiary origin and can not prove it and they will then rely on some failure of notice, and so on?

Mr. LOINES. That is quite true, Mr. Kirkpatrick. I think most of the responsible and established companies would do that, and we, in dealing with the claims, usually have regard to those considerations. It has been admitted by our friends, who handle claims of the underwriters.

Mr. LAWS. I would like to ask you one or two questions. Have you with you any data to show the amount of claims that were pre-

sented to your association for loss and pilferage and nondelivery, say in 1920?

Mr. LOINES. At the present time?

Mr. LAWS. Yes.

Mr. LOINES. No.

Mr. LAWS. That came into your hands through the steamship companies?

Mr. LOINES. No.

Mr. LAWS. Have you any data with you to show the percentage of claims that were paid during that year, for those losses?

Mr. LOINES. Percentage in relation to what?

Mr. LAWS. In relation to the total claims?

Mr. LOINES. Presented?

Mr. LAWS. That were presented; yes?

Mr. LOINES. No.

Mr. LAWS. Who is the final arbiter as to whether or not a claim is to be paid?

Mr. LOINES. By the association?

Mr. LAWS. Yes.

Mr. LOINES. The directors.

Mr. LAWS. Or by the steamship company?

Mr. LOINES. The directors.

Mr. LAWS. The directors of the association?

Mr. LOINES. Yes.

Mr. LAWS. Therefore the directors of the association are passing upon the question as to whether or not they shall pay out of their own steamship company's pocket, or whether they shall not pay?

Mr. LOINES. Quite so.

Mr. LAWS. In effect?

Mr. LOINES. Yes.

Mr. LAWS. And that is true of the first $500 paid by the individual shipowner?

Mr. LOINES. The association is not interested in the first $500.

Mr. LAWS. Then the shipowner himself determines that fact?

Mr. LOINES. Presumably.

Mr. LAWS. Does your association supervise the docks, as you have indicated, at ports other than New York?

Mr. LOINES. Yes.

Mr. LAWS. What docks; what cities and ports?

Mr. LOINES. At San Francisco regularly and at other ports occasionally.

Mr. LAWS. Any in Europe?

Mr. LOINES. Yes.

Mr. LAWS. Where?

Mr. LOINES. Wherever it is necessary.

Mr. LAWS. Well, that is indefinite. Can you give it more definitely than that?

Mr. LOINES. At Havre, Bordeaux, Marseille, Christiania, Copenhagen, Hamburg, Bremen, Rotterdam, Antwerp, Genoa, whenever necessary. Also in the United Kingdom.

Mr. LAWS. What objection do you have to a steamship owner being liable for the full value of an article that is proven lawfully in a

court of justice to have been stolen, pilfered, or nondelivered through negligence while in the custody of one of your carriers?

Mr. LOINES. I am very glad you have asked me that question. I forogot to bring it out in my direct statement.

My view is this: We know from what has been testified to in these hearings that there is a great chance of theft and pilferage occurring while the goods are not in the possession of the shipowner, and in such circumstances the shipowner is liable for them, because he is unable to prove that the theft and pilferage did not occur while they were in his possession. Now, I feel that in fairness it is right that the shipowner's share of that loss should be limited; that there should be some burden on the other interests; particularly there should be a burden on the shipper to furnish a sound and strong package, capable of resisting the events of the journey.

We are dealing with a condition. We are dealing with a trait of human nature that is probably ineradicable—the desire to take another man's property when you can get your hands on it. That is a universal trait, and there is no reason why when during a transit of which the shipowner's share is only one part and a loss occurs the shipowner should be brought into the position of paying for the whole of it.

Mr. LAWS. I say, assuming that it is legally proven in a court of law that the shipowner says that the loss by pilferage or nondelivery occurred through the negligence of the shipowner, what answer have you to the proposition that he ought to pay the entire amount of that loss?

Mr. LOINES. You know, Mr. Laws, that the legal proof in a court of law that the shipowner is responsible may be brought home to him notwithstanding the fact that he has not been negligent. He may be proven negligent because he is not in a position to show the contrary. We have had testimony here to-day of a case where the removal of shoes from cases came to the shipowner's knowledge by pure accident when he gets the goods. If he had not had a chance to discover that those shoes had been removed before he got the package and it had gone on to destination and on delivery had been opened up and it was then found that that condition existed, he would have been in the position where he could not prove that it had not occurred in his possession, and the court would hold him negligent. Now, the very circumstance that the shipowner is necessarily put in the position of being saddled with a loss for which he was not responsible makes it very right and fitting and fair that he should only have a limited share of the responsibility.

Mr. LAWS. Then you think it is more proper for the shipowner to be the judge as to whether or not he should pay the loss than for the shipowner and the claimant to come into court, and before a court with even-handed justice, have the court decide that question, do you?

Mr. LOINES. I do not make any such sweeping statement, Mr. Laws. That is your own inference.

Mr. LAWS. Is there any other inference that we can draw from what you say, that you think the shipowner ought to decide it rather than to have the court decide it, and that there would be more justice done if you decided it than if the court decided it?

Mr. LOINES. I am considering this question as a large condition with which we have to contend.

Mr. LAWS. So are we.

Mr. LOINES. You can take a particular case and say that the shipowner may be taking an unfair advantage, but dealing with it in a large way, leaving this burden distributed, leaving an interest on the part of the shipper to make it impossible for the loss to happen, is a very desirable thing, and therefore I think the limitation is one that should be agreed upon. If the limitation of $100 is not reasonable, find some other limitation. That has been the traditional limitation in most States, and we have heard to-day—yesterday—that it represented an important percentage, 80 or 90 per cent, of our shipments. It seems to me that if that is the case it is quite fair and proper that the shipowner should not be asked to bear more than that share.

Mr. RUSH. I was unaware until sime time ago, when Mr. Laws made the statement, that all of this inland loss, when made on railroads and express companies—I beg your pardon, Mr. Loines made the statement—that it was all under a release bill of lading, and I was unaware that he had had any opportunity to examine our files and say that. When did you get that opportunity, Mr. Loines?

Mr. LOINES. I did not know that it was under a released bill of lading.

Mr. RUSH. You said so. How did you know that?

Mr. LOINES. I do not remember saying anything about the release clause in the bill of lading. What I said was this, that on the figures that you gave for the sea losses, on which you base your suggestion that the $100 clause should be left out—showing the enormous increase of theft and pilferage which you had had to pay—I said you certainly did not mean to say anything about your recovery from the carrier.

Mr. RUSH. I would like to refer to the record, because, as I recall it, you stated that the shipments by sea that were lost by some fault for which the shipper or underwriter were responsible should not be subject to that limitation of $100; but it is proved that where we had shipments on land that that limitation did not apply, and I was wondering how you examined our books to find that out.

Mr. LOINES. My point was, Mr. Rush—which you will find on referring to the record—that by eliminating any valuation clause from a bill of lading you would stop theft and pilferage.

Mr. RUSH. I want to testify that a great deal of that shipment by land was under limited value receipts by express companies.

Mr. LOINES. Your land figures, then, were based on a limited form of bill of lading? I think that that strengthens my point. On the other hand, your losses would have been a great deal greater, perhaps, if they had not had that release clause.

Mr. RUSH. I just want to say, I think it is unfortunate that you testify about the losses by another company, which have nothing whatever to do with the case.

Mr. BURCHMORE. Should the record not be cleared up on that by a question or two? It is a fact, Mr. Rush, that many of our losses were on shipments by express, shipments by express in this country being customarily subject to a $50 limitation?

Mr. RUSH. Quite so.

Mr. BURCHMORE. Does that not represent the larger proportion—I do not know as it would be half, but a considerable amount—of the figures that you gave?

Mr. LOINES. Your land bill of lading, I take it, contains the absence of all of the other clauses to which you object. You will admit, perhaps, that the theft and pilferage is as great by land as by sea.

Mr. RUSH. No; I do not.

Mr. LOINES. Well, I don't care whether you admit it or not.

Mr. AMBERG. In regard to these notice clauses, you have testified that it is very difficult for the steamship owner to know whether goods are received by the owner as ordered; that the contents of the package may be deceptive; goods may have been removed before the steamship owner received the package.

Mr. LOINES. Yes, sir.

Mr. AMBERG. And that is not discoverable by a casual inspection of the package.

Mr. LOINES. No.

Mr. AMBERG. Now take the *Persiana*, where the court held that a clause requiring the receiver to give notice of claim before he removed the goods from the dock—the court held that to be reasonable, and we have had much talk about leaving it to the court to say whether or not it is reasonable. In your mind is that clause reasonable in the commercial sense? What I am driving at is this: It may be that the courts will lay down a rule of reasonableness, borrowing from the common law things having in the consideration of law no commercial aspect; in your opinion is such a clause reasonable in the commercial aspect?

Mr. LOINES. Take it by and large, I think it is.

Mr. AMBERG. One more question, then, in regard to these notices. You have stated, and I will admit, as I have admitted this afternoon, that it is not uncommon for the steamship owners to waive these notices—to be sure at their own pleasure—but do you not often have short-notice clauses, which to my mind are a commercial necessity, to defeat claims which become larger by discovery of subsequent facts? In other words, take the case of a claim for tar paper, roofing paper—I have one in mind where the original damage was $100,000; notice of claim was given, suit properly started within the rather short limit of three months, I think it was; after the three months had elapsed it developed that this tar paper had absorbed other material—I don't know what it was—well, it melted, the tar paper had melted, and the damage turned out to be $400,000 instead of $100,000. When the suit was subsequently started to recover that additional damage, the steamship owner pleaded his notice and the failure to bring suit within the time limit. Is that reasonable?

Mr. LOINES. I do not like to answer that question without knowledge of all the details of the case. Your office has a great many claims lodged, and I should not care to answer a question in regard to a particular case without knowing all the facts.

Mr. AMBERG. That is perfectly clear. All I wish to raise is the reasonableness of these provisions from the commercial point of view. I hope that on the whole we treat them in a fair and reasonable way. That is all I can say.

Mr. LEHLBACH. Are there any other questions, gentlemen? If not, you are excused. Mr. Campbell, will you call the next witness?

Mr. CAMPBELL. Mr. Hickox is going to speak, but I want to ask Mr. Kellogg just one question to clear up the situation.

Mr. Kellogg, does the Munson Line operate out of Baltimore?

Mr. KELLOGG. Yes, sir.

Mr. CAMPBELL. Will you tell us whether or not there is any appreciable quantity of these high-grade goods passing through the port of Baltimore?

Mr. KELLOGG. Most of the goods moving to the port of Baltimore in connection with our line, or any of the out ports, move in carloads from the interior.

Mr. CAMPBELL. What kind of goods are they?

Mr. KELLOGG. They are made up mostly of bulk cargoes; not much of the high-class cargoes. The port of New York gets a greater proportion of the cargo where the packages are valued in excess of $100.

Mr. CAMPBELL. That is all.

Mr. RYAN. I can substantiate that statement, so far as the continent of Europe is concerned.

Mr. CAMPBELL. Mr. Hickox is not my witness at all. He is independent of myself.

Mr. LAWS. He is your partner, though, is he not?

Mr. CAMPBELL. Yes; I am very glad to say he is.

STATEMENT OF MR. CHARLES R. HICKOX, REPRESENTING CERTAIN STEAMSHIP COMPANIES.

Mr. HICKOX. I testify on behalf of a considerable number of companies, American and foreign, a list of which I will give the stenographer.

The list referred to follows:

American Black Sea Line.
Anchor Line.
Baltic American Line.
Bristol City Line.
Cosulich Line.
Cunard Line.
Donaldson Line.
Ellerman's Phoenix Line.
Ellerman's Wilson Line.
Fabre Line.
French Line.
Funch, Edye & Co. (Inc.).
Furness Lines.
"Head" Line and "Lord" Line (Baltimore).
Holland America Line.
La Veloce.
Lamport & Holt Line.
Lloyd Sabaudo.
Manchester Liners (Ltd.) (Philadelphia).
National Greek Line.
Navigazione Generale Italiana.
Norwegian America Line.
Ottoman-America Line.
Polish American Navigation Corporation.
Portuguese Line.
Royal Mail Steam Packet Co.
Scandinavian-American Line.
Sicula Americana.
Spanish Royal Mail Line.
Swedish American Line.
Trans-Atlantic Steamship Co. (joint service).
Transatlantica Italiana.
Transoceanica.
United American Lines (Inc.).
United States Mail Steamship Co. (Inc.).

The nature of this inquiry, as we understand it, is in the matter of theft and pilferage, to find out, if possible, what the causes of it are and what, if any, remedies can be suggested.

We have had statements and arguments from underwriters and shippers for two days, which have stated that claims for theft and pilferage have been very large within the last two years, and we have drawn from the underwriters two suggestions as to the cause. Those suggestions are, as I understood them:

First. That the Harter Act, although originally a good act, had been frittered away by legal additions, with the result that it now was a protection to the shipowner, if not an inducement toward having such claims continue.

The other was that the clauses in the bill of lading were also a direct inducement to the carrier to permit such claims; certainly they were productive of the present situation.

I shall deal with those two suggestions a little later, but before that I will refer to what has been offered in the way of proof as to the cause of this theft and pilferage, and that, I think, can not leave any doubt in the minds of the committee as to what is variously described as a lawless condition in which the world generally has been operating for the last several years. Everybody knows that in every line of industry the effect of the war, the taking away of a large number of the men for military service, their actual experience gained as a result of their service, and the exceedingly high wages secured by those who did not go into the service; the subsequent great rise in the values of everything, easy money all around, has resulted in a condition which has been exceedingly hard to deal with in all the civilized countries, let alone the uncivilized countries.

War, of course, is a lawless business, and in consequence of the things that are done then, both by individuals and by Governments, very many difficulties have arisen, and we have gotten away to a large extent from the notions under which we act during peace times. The testimony before you shows that that condition is largely finished, and you know of your own knowledge, aside from the testimony that may be given to you, about what is occurring in the steamship industry; that conditions are gradually returning to normal everywhere.

The steamship people have described what efforts they made to meet these claims for theft and pilferage. You find that individual steamship companies operating out of New York have spent as much as $400,000 a year for watchmen in order to protect the property of these various shippers while they were on the steamship docks and in the possession of the steamship companies. One of the companies that did not send a representative down here spent, according to statements that they made to me a few years ago, $500,000 in one year for the expense of watchmen, and the details that have been given to you of the efforts that the shipowners have made, I think, should convince you that there has not been any negligent management of the business going on during this very trying period.

The steamship people hope that with the continuance of the active measures that they have taken matters will settle down, as it looks now as if they would settle down, until before a very long period it may reasonably be expected that questions of theft and pilferage will be no more important than they were before the war started.

Now, let us deal specifically with these suggestions of the underwriters as to what they claim to be the causes of theft and pilferage,

and their suggested remedies. I think it will be sufficiently clear that the circumstances disclosed here not only do not support their contention, but they positively disprove it.

First, we will take the question of the Harter Act. The suggestion was unequivocal that the Harter Act, in the opinion of shippers and perhaps of underwriters, was originally a good act. Certainly shippers have said so, several of them who were speaking at this session, but it is claimed that the Harter Act, as the result of recent conditions, has been shorn of its original efficacy so that it has become a very different thing from what it formerly was.

Disputes on questions of fact are, of course, somewhat discouraging, but there can not be any doubt whatever as to the fact that there has not been any recent decisions on the subject of the Harter Act which have affected its original intention or its present language, and there has not been any amendment of any kind whatever to the Harter Act since it was passed. Now, that is not merely a question of whether an insurance representative or a lawyer, perhaps, may have different views on the subject; it is a matter of absolute record. The books can be searched on the subject, and I submit with entire confidence that it will not be possible for anybody to find any case which frittered away the Harter Act, or attempts to do so, and certainly there have been no decisions within the last half dozen years that have dealt with any novel question under the Harter Act. Those questions came up during the 10 or 15 years after the Harter Act was passed, and while it was in operation, and after, let us say, 1905, I think, there were scarcely any decisions under the Harter Act that dealt with novel conditions.

So I think you can take it as a fact that for a matter of upward of 10 years before the war the views of the public generally, and certainly the expressed views of the court, with respect to the Harter Act were definitely settled and everybody understood what it meant.

Now, operating under that Harter Act from 1893 until the war broke out, there was a period of—well, a dozen or more years—20 years nearly—in which it had not been found—certainly it has not been suggested by the insurance people nor by the shippers—that that act resulted in large claims for theft and pilferage, or that it induced in any way the commission of those crimes. On the contrary, we have the statements of the insurance people, based on their premium charges and their claims for theft and pilferage, that up to the outbreak of the war those claims were negligible. Now, if they were negligible, we must definitely put to one side the suggestion that the Harter Act during the period of the war was the cause of large claims for theft and pilferage. It seems to me that that is a demonstration. There may be objections that one interest or another may seek to raise to the Harter Act, but any such objections can not fairly be put forward at this hearing as suggestions warrant it on an inquiry into the causes of theft and pilferage. If it is a question of considering de novo whether the Harter Act is a good act or not, and whether it should be repealed, that is a large inquiry which would certainly need a very much more extended consideration than it has been possible to give by the statements that have been going on here in the last three days. That question, however, is not a novel one. In 1913 a bill was introduced in the Senate by Senator Nelson to secure an amendment

of the Harter Act, and hearings were held on that subject. Some of the most prominent people, well versed in shipping law, were heard at those hearings, and the testimony is incorporated in a document, in a pamphlet published by the Government entitled "Liability for damages arising in the navigation of vessels." Hearings before the Committee on Commerce, United States Senate, Sixty-second Congress, third session, on S. 7208, "A bill to amend an act entitled 'An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property,' approved February 13, 1893." There is a great deal of valuable information contained in that publication, which I think this committee or any committee considering the general question of the Harter Act should be glad to have, and I would like to have that pamphlet incorporated as part of my statement.

Mr. LEHLBACH. You mean the entire report of the committee?

Mr. HICKOX. The entire report, yes. I may say that as the result of what was developed at those hearings, nothing was ever done with respect to the bill.

Mr. LOINES. Excuse me for interrupting—was that bill substantially identical with the bill now pending in the Senate?

Mr. HICKOX. I think it was, but without comparing it paragraph by paragraph I can not tell. But the same kind of objections, if not the very same objections that have been urged here by the underwriting interests, were urged on this hearing. It developed during the hearing that the Harter Act was in accordance with the general maritime rules that were existing throughout the world, and we find that in 1910 the very same Harter Act was passed with certain slight additions, in Canada, and it is now the water carriage of goods act in Canada, and perhaps the principal difference between the language of the Harter Act and the water carriage of goods act is that the Canadian act contains a specific provision incorporating what is the substance of a clause in a bill of lading which has been subject to most serious attack at these hearings. I will just quote that section from the water carriage of goods act. It is section 8:

> The ship, the owner, charterer, master, or agent, shall not be liable for loss or damage to or in connection with goods for a greater amount than $100 per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever, if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master, or agent.

Mr. LEHLBACH. Doesn't that language imply an option on the part of the shipper to state the true value when he makes his contract?

Mr. HICKOX. Oh, yes.

Mr. LEHLBACH. But under the present circumstances pertaining in the business he is precluded from stating any other value—it would not be received and would not be incorporated in the bill of lading—excepting $100.

Mr. CAMPBELL. Every line has testified to the contrary.

Mr. HICKOX. On the contrary, the testimony is uncontradicted that every steamship company operating—every principal steamship company certainly—operating out of the port of New York would always be willing to give an unlimited liability in amount under

their bill of lading if the additional freight commensurate with the increased value were paid. Now, there should not be any misunderstanding about that.

Mr. LEHLBACH. That is where the testimony is contradictory.

Mr. HICKOX. I think not.

Mr. LEHLBACH. Some of the shippers or representatives of the shippers, particularly those in the inland points who have not access to the New York offices of the steamship companies have testified here that it was absolutely impossible to ascertain what such a rate would be.

Mr. HICKOX. Well, I can not speak about what may have occurred at the inland towns, but I think there is no doubt whatever, not only from what has been stated here, but as anybody will know who has ever made the attempt in the port of New York, that if you wish to obtain an unlimited amount of liability—that is, a declared value of your package for $1,000 or $5,000, or whatever the number of dollars might be—you can get it.

Mr. LEHLBACH. Furthermore, Mr. Ryan testified here on behalf of the International Mercantile Marine, that if application for such increased liability based on greater value should be made to them, they would not allow that question to be passed on elsewhere than at the home office in New York in the first place; and in the second place, they would, before making such a rate, want the opportunity to ascertain what the insurance charged by underwriters would be for such risks; consequently they would not be in a position, without inquiry and investigation, to quote such a rate.

Mr. HICKOX. Possibly not.

Mr. RYAN. Mr. Chairman, may I correct you there? I think you did not quote me quite accurately.

Mr. LEHLBACH. I want to be corrected if I did not.

Mr. RYAN. In answer to Mr. Rush's inquiry as to what rate I should make on a given valuation, I stated that before being able to make the rate, the process I would follow would be to consider all the facts, value, bulk, and so on, and base my rate probably on the cost of reinsuring the risk.

Mr. LEHLBACH. But did you not say you would want to ascertain what that cost would be before quoting a rate?

Mr. RYAN. That would be the natural process.

Mr. LEHLBACH. Well, then, I do not see that I have materially misquoted you, Mr. Ryan.

Mr. CAMPBELL. It could be done by telephone call to the office in New York.

Mr. RYAN. There would be no substantial delay in giving a man that quotation.

Mr. BURCHMORE. The statement of Mr. Herrick, Mr. Chairman, contradicts the assertion.

Mr. LEHLBACH. I know; but, of course, Mr. Herrick's statement does not bind this statement.

Mr. BURCHMORE. The witness now says it is uncontradicted, and I call attention to the contradiction by Mr. Herrick.

Mr. HICKOX. I do not wish to be in any dispute with any witness on a simple question of fact. Mr. Herrick stated, as I recall it, that some representative of his in Chicago endeavored to find—endeav-

ored to ascertain—what the rate would be if they had an unlimited liability, and he had difficulty in finding it. I do not dispute that he may have had such difficulty, but I do say that anybody who had attempted to ascertain those circumstances in the port of New York would not have to wait half an hour in order to get the information from the steamship company, and that is the way in which the business has been done in the port of New York, certainly as long as my recollection extends, and I have no doubt farther back still.

Now, the very fact that the Canadian Government incorporated this $100 limit in its bill of lading—in its water carriage of goods act—some 17 years after the Harter Act had been passed here, is a fairly strong indication of the feeling that they had in Canada as to the propriety of such a limitation in a bill of lading. They made it part of the basic law of the land. So far as other maritime countries are concerned, without referring to every bill of lading of every steamship company, it may be stated that substantially the same thing does appear in all the bills of lading that are in use in general trades.

Reference was made to the fact that in an Australian bill of lading there was a higher limitation of value, I think, of about $1,000. That condition arose several years ago as the result of competitive conditions. It is confined to that particular trade, and we do not find it in the bills of lading generally of the English or other foreign steamship companies, Canadian companies, nor companies trading out of the United States.

I think, therefore, that whatever may be said in the matter of principle as to the advisability of the Harter Act the matter must be disregarded in considering this question of theft and pilferage, because the two have no possible connection whatever.

Mr. KIRKPATRICK. Before you leave the Harter Act, Mr. Hickox, I want to ask you one question.

Conceding that what you say is true, that the law has been settled for the last 10 or 15 years by decisions of the court, do you not really think that the early decisions of the courts under the Harter Act, and the practices that have grown up under those decisions, have resulted in perpetuating a condition which the Harter Act was really meant to abolish?

Mr. HICKOX. Not at all. If you will read the testimony that was given on this investigation, the hearings on the Nelson bill, you will see that the suggestion which has been thrown out to you by one or another of these witnesses on Monday or Tuesday, that by some sly necromancy the Harter Act has been changed from its original intention is not so.

Mr. KIRKPATRICK. I base my question simply on the language of the Harter Act without any such suggestions.

Mr. HICKOX. You will find, if I may answer you further in this way, that the testimony on this investigation deals with the act as it was originally proposed in Congress. The language of the act as proposed was not the same as that finally passed, and according to the witnesses here the act as finally passed was altered in order that it should express just exactly what it did and cover the things which are included, we will say, in the court's construction of it.

Mr. KIRKPATRICK. I see what you mean.

Mr. HICKOX. Now let me say one thing further. One person or another may read the language of the statute and come to some conclusion as to what that statute means. We have not yet reached the stage where statutes are drafted with such clarity that there can not be any possible doubt as to the meaning of the words. We must, of course, have some means or some standard by which they are to be judged, and the only thing that we can possibly do is to leave it, under our system, to the determination of the courts.

Mr. KIRKPATRICK. I said the decisions of the courts and the practices which those decisions have—possibly unwittingly—permitted.

Mr. HICKOX. All I can say on that is that if you do not agree with the view of the court as to what the language means, that, of course, is your opinion as against the opinion of the court, and if the majority of people should agree with you, something would have to be done to change it, to change the situation. But I think it would scarcely be fair for anyone or any considerable number of individuals to say as a fact that the decisions of the Supreme Court in dealing with a particular statute had nullified the plain effect of the language.

Mr. KIRKPATRICK. Well, I did not say that, but sometimes a court hands a decision down without foreseeing all that can be done under that decision and all the consequences of that decision, and that is why I included not only the decisions of the court, but the practices that they permit.

Mr. HICKOX. Well, that is possible, but the different phases, or different sorts of circumstances have been before the consideration of the Federal courts and of the Supreme Court on numerous instances, and the present state of the act, if I may so describe it, is not the result of any one decision at all.

Mr. LAWS. Will you give this committee this point while you are right there: Is there any decision prior to 1919 in which it has been expressly held that under the Harter Act the limitation of liability to $100 is valid?

Mr. HICKOX. There were numerous decisions.

Mr. LAWS. Give us one.

Mr. HICKOX. I can not give them to you at my fingers ends.

Mr. LAWS. That is all I wanted to ask you.

Mr. EDMONDS. Will you supply that?

Mr. HICKOX. It would make it necessary for me to make a digest of the cases in the Federal court.

Mr. EDMONDS. Just give us two or three decisions. Surely you know the decisions in an important case like that.

Mr. HICKOX. No; because nobody, so far as I know, until this time that Mr. Laws speaks about, ever raised any question about it. Nobody supposed that there was the slightest question about it. Now let me read to you what the Supreme Court has said.

Mr. LAWS. That was a railroad case.

Mr. HICKOX. I am sorry to deprive you of the opportunity, Mr. Laws. In 1884, the Supreme Court of the United States dealt with a valuation clause of $100 in a bill of lading—and I am merely anticipating now what I was about to speak of in connection with the discussion of this bill-of-lading clause. In that case of Hart against the Pennsylvania Railroad Co., 112 U. S., 331, pages 340, 341, this

language appears—and I think it is so illuminating on this particular subject that I ask permission to read it to you. This is the language of the court:

> The limitation as to value has no tendency to exempt from liability for negligence. It does not induce want of care; it exacts from the carrier the measure of care due to the value agreed upon. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value was greater. The articles have no greater value for the purposes of the contract of transportation between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy; on the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and of the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of the contract if there is no loss and to repudiate it in case of loss.

Now, there is a flat decision by the Supreme Court, which is the only tribunal to which we can look for ultimate guidance in the matter, that in their opinion the limitation as to value in a bill of lading had no tendency to exempt from liability for negligence.

Mr. KIRKPATRICK. What is the date of that?

Mr. HICKOX. 1884, nine years before the Harter Act was passed. And all that the Harter Act in substance says is that the shipowner—on this particular point—is that the shipowner shall not insert any clauses in his bills of lading which shall relieve him from liability for negligence in the loading, stowage, custody, or care of the cargo. Now, I can not conceive, in view of that language, how any sane man could have expected that the Supreme Court would ever say anything else, if the question ever came before them, than that the limitation of $100 in a bill of lading was not in violation of this provision of the Harter Act; and if the gentlemen who think to the contrary urge on you that you should take that view, I can only refer you to the language of the court itself.

Now, the other clause, the second clause, is somewhat inconsistent, I think, with the first suggestion by the underwriters, that the bill of lading clauses, compressing the carrier out of liability have caused these thefts and pilferages. It is a little difficult, perhaps, to see how there can be these two clauses, which are quite different, working along hand in hand to produce the same result. But what is there in the clauses of a bill of lading which has been suggested to you as leading in any way to the commission of theft or pilferage?

You have heard some of these witnesses suggest that the carrier has exempted himself from every possible liability under the bill of lading, and therefore there is no liability assumed, and if a case of damage arises there is no use presenting it against the carrier because it will be repudiated under one of these clauses. Nothing can be farther from the facts than that. No experienced lawyer would assume to say to you that the specification of exceptions in a bill of lading relieved a carrier absolutely from liability for damage caused by any of those exceptions. He knows that it is not so. There are various exceptions, for instance, included in a general clause, usually comprising acts of God, and, among other things, theft and pilferage or leakage, and what not. Now, what the specification of those clauses in a bill of lading means is this and only this: That if a loss

occurs which the carrier can show is due to one of the excepted causes, the burden of them showing negligence is on the shipper; if the carrier can not show that the particular loss or the claim for damage was due to some one of these excepted clauses, he can not take advantage of those exceptions in the bill of lading and he necessarily loses, and the way in which the thing works out in practice is just that way: A claim is presented to a steamship company, and it may be that the cause of the damage is not clear; the carrier must first show how the damage was caused, and if he fails in doing that the court says, "It is a case of unexplained damage and the carrier is liable." Now, there is no possible question about that as an actual statement of law.

Then, if he can show that the loss or the claim for damage, we will say, was due to breakage, then, by reason of the insertion of that clause in the bill of lading the shipper has the obligation of showing that the carrier's negligence or the negligence of the employees, whoever they may have been, brought that breakage about. And the reason of that is that, as a matter of ordinary fair dealing, there is no reason on earth why a carrier should be liable for something which his negligence has not caused. Now that is not merely a view which I express to you on behalf of the shipowners, but it is a view which is acquiesced in by certainly a considerable number of shippers and by some of the people who have actually testified before you during these last three days.

Last year there were hearings before the Interstate Commerce Commission on the question of such changes, if any, as might seem desirable in the through export bills of lading. We had hearings, as I think Mr. Loines has suggested, in Washington, Chicago, and again in Washington, and some of the gentlemen who have testified here to-day, testified at very much greater length on those hearings. We had the packers' representatives; we had the National Industrial Traffic League; we had Mr. Burchmore; we had the chewing-gum manufacturers; and we had various others, and as a result of various powwows during the course of that investigation a form of through export bill of lading was submitted to the commission, which contained the suggestions of the ocean carriers, and also contained any differing suggestions on the part of the shippers whose interests were mainly conducted at that time by the Industrial Traffic League.

Now, I do not suppose it is any wish on the part of this committee, especially at this very late hour, that I should discuss in detail any of the conditions of this export bill of lading, but perhaps I may just say very shortly that it covers two and possibly three pages of transcript.

First, the carriage from the point of shipment to the seaboard; next, the ocean carriage; and, third, the further carriage at the end of the ocean carriage, if indeed there is such a third.

Now, I would like to submit to the committee a copy of the memorandum that we submitted with this printed form of bill of lading, which will show you on one side the clauses substantially as they were in the through export bill of lading in effect since 1899, with possibly slight changes that might have been agreed on between the ocean carriers and the shippers, and the points of difference, set out on the margin so that you will clearly see them, suggested by the Industrial Traffic League.

Mr. LEHLBACH. The committee will be glad to have that.

Mr. HICKOX. And you will find that there are comparatively very few serious points of difference—very, very few—and the particular point that I was dealing with in this matter is the suggestion that the proposal of the Industrial Traffic League, in place of the specification of exceptions in the bill of lading which are largely objected to by the shippers, was this clause:

> The ocean carrier shall not be liable for loss, damage, delay, or default occurring from any cause whatsoever, except where the negligence of the ocean carrier is the proximate cause of the injury complained of.

Mr. LEHLBACH. Does the bill of lading deal with the question as to where the burden of proof should lie?

Mr. HICKOX. No; that suggestion does not say anything about that.

Mr. LEHLBACH. I mean anywhere else in the bill of lading?

Mr. HICKOX. No.

Mr. BURCHMORE. May I call the attention of Mr. Hickox to the fact that the bill-of-lading form actually submitted by the league in that proceeding, of which Mr. Bentley offered a copy here when he testified, was amended from the copy you have before you by the insertion of the very words "the burden of proof of negligence shall be upon the carrier."

Mr. HICKOX. I did not know about that if it was so, because this is what we submitted.

Mr. LEHLBACH. That was my recollection, and that is why I asked that question.

Mr. BURCHMORE. And it was so printed in our brief in that proceeding.

Mr. HICKOX. I can only say that this is what we understood was the last word of the Industrial Traffic League, and we printed this and submitted it to the commission accordingly.

Mr. BURCHMORE. In justice to Mr. Hickox it just occurred to me that that suggestion was added after the hearing and before the filing of the brief.

Mr. HICKOX. I never heard of it before.

Another circumstance which shows—I think quite conclusively—that these specifications of exceptions in the bill of lading can not be the cause of the theft and pilferage is the fact indicated by the rates of the insurance companies. We find that on shipments of whatever kind of cargo from the port of New York to England or continental ports the rate for theft and pilferage previous to the war was a percentage which I understood to be described as substantially negligible.

Mr. LEHLBACH. About a quarter of 1 per cent.

Mr. RUSH. To Europe.

Mr. HICKOX. To Europe; yes. During the war that rate rose to 1 or 2 per cent. What was it, Mr. Rush?

Mr. RUSH. About 2 per cent or 2½—somewhere around there.

Mr. HICKOX. Well, 2 per cent. At the same time the rates to South America, which seemed to be the great bone of contention here, rose to 10 or 15 per cent and were so high that at least one of the companies declined to insure for a certain period commodities to that country. Well, now, we also find that on the delivery of cargo to South America the ship discharges into what I described as

"fiscal wharves" that are controlled by the Government and the customhouse. So that you will easily see that on a vessel, say, a tramp vessel, or a vessel of some of these English owners which sometimes operate in transatlantic trade to Europe or England and sometimes to South America, you have got two constant factors—that is, you have got the laboring or loading personnel in the port of New York, and you have got the personnel on the ship and the differing factors in the two instances and the conditions at the port of discharge in Europe, and the conditions in the port of discharge in South America. Now, that, as I submit, is an absolute demonstration that if the rates for the carriage by the same kind of steamer, and possibly the very same steamer, of valuable cargo, or cargo that is subject to pilferage, largely to South America results in such very large claims of pilferage that the source of the trouble must be looked for right there, because manifestly if the difficulty was one that existed at the port of New York you would not find any such disparity between the rates for carriage to the two ports.

Mr. EDMONDS. Have any of your clients ever taken enough interest in it to submit to the State Department or to the Department of Commerce the statement of these tremendous losses in South America and ask that they make it the subject of conversation with the Governments down there?

Mr. HICKOX. I can not say as to that.

Mr. EDMONDS. Naturally I would think that they would do that through their office.

Mr. HICKOX. Quite true, but I am not their alter ego, and I can not tell.

Mr. EDMONDS. They did not do it through your office, you can say?

Mr. HICKOX. They did not do it through me. That is all I can say. Whether the subject has ever been discussed by anybody else in the office I do not know.

Mr. EDMONDS. They did not betray sufficient interest after it left their hands to try and endeavor to trace this loss up?

Mr. HICKOX. Well, I do not know what they could do. No suggestion has been made here of what a steamship company could do with respect to cargo that goes into the hands of fiscal agents of these South American ports.

Mr. EDMONDS. Now, due to the losses that occur through those ports, can you not make representations to the Department of Commerce of those losses and have them take it up with the State Department?

Mr. HICKOX. If that is a suggestion which seems feasible to the committee, perhaps it can be acted on.

Mr. EDMONDS. Surely the representations of the merchants engaged in this commerce that steps were necessary in order to prevent these losses in commerce would be listened to by the foreign country.

Mr. HICKOX. That may be a very useful suggestion.

Mr. EDMONDS. It looks to me as if you just dumped it overboard there and let it go and never paid any more attention to it.

Mr. HICKOX. Well, I presume that any carrier, express company, or railroad company or water carrier on the completion of the transit was very glad to be done with it.

Mr. CAMPBELL. Has the United States Government, the owner of 80 per cent of the American ships, taken it up with its own State Department?

Mr. EDMONDS. I do not know.

Mr. CAMPBELL. Have you as a trustee of the American people, Congressman, urged the State Department to take it up?

Mr. EDMONDS. I am waiting to get somebody to tell me the story. That is the reason I am asking these questions. I should have thought that that would appear as a possible way of preventing these losses. It looks to me as if you folks, after you got to the end of the title, were just glad to get rid of it.

Mr. HICKOX. It has just been suggested to me, since you spoke, that the representatives of the lines running into Santo Domingo did ask the United States representative at that point to take some action and make some representations to the Government on the subject, though nothing further has been heard about it.

Mr. LEHLBACH. Have you concluded, Mr. Hickox?

Mr. HICKOX. No; but I shall in a very few moments.

Mr. LEHLBACH. I did not mean to limit you, but I wanted to know whether you were through.

Mr. HICKOX. There is only one further feature that I wish to speak about. If in consequence of an amendment to the Harter Act, or the passing of any other legislation, the shipowners are required to assume a liability, which they have not now under their bills of lading, in whatever form it may be put, it is, I think, the plainest of business propositions that the shipowner, if he incurs a greater risk, involving a greater financial responsibility, must receive an additional compensation, otherwise he can not stand it. If you were dealing with a situation where the steamship company was making what may be regarded as exorbitant profits, there might be some indication for suggesting that possibly those profits should be kept down by putting on the steamship companies a greater liability than they had been accustomed to bear. We know, however, that at the present time steamship companies have exceeding great difficulty in living, and I am not even sure that you can fairly say that the United States Shipping Board vessels at the moment are living; at any rate, they are not able to make any kind of a profit; a very great number of them are not operating at all, because they can not be operated at a profit, and if they should be started out with the idea of incurring a greater liability than steamship companies have been incurring for many, many years—ever, so far as we know—I think it would be impossible to suppose that the thing could be done as a practical measure.

If you are going to require the shipowner to assume the additional liability, he has got to cover himself in some way, and he will either have to insure himself in such a way that he will have to pay premiums to an insurance company to get insurance on his cargo, which, acting in accordance with sound business principles, will vary in accordance with the risk, and if the risk is great the premium will have to be high—they will have to do that, and they will have to get their compensation for that additional amount out of the freight, because that is the only possible source of revenue the steamship company has. Now, if the steamship company then has to charge

freight rates which are very much greater than they are now, it is exceedingly to be doubted whether the situation of the shipper is going to be improved in any way, and unless it can reasonably be seen that the result is going to be a benefit, it is perhaps obvious that existing business conditions should not be tampered with.

Mr. LEHLBACH. Mr. Hickox, you have dealt with certain of the limitations in the bills of lading. How can you justify morally a provision in a bill of lading which divests you or the shipowner of liability for negligence to the extent that the shipper may have been insured against damage?

Mr. HICKOX. I do not, and no such clause in a bill of lading is valid.

Mr. LEHLBACH. But they are frequently put in.

Mr. HICKOX. It may be that they are in some bills of lading, but——

Mr. LEHLBACH (interposing). And apparently there must be some attempt on the part of the shipowners to impress them, otherwise the practice of loan receipts would not have grown up.

Mr. HICKOX. I do not think that is true. A great many clauses which you find in bills of lading are handed down from past generations. A great many of them come from British bills of lading, where the marine laws are far more liberal to the shipowner than they are here. In the very important particular—I mention one so as not to prolong the discussion unduly—in Great Britain it is legal for a shipowner or a common carrier to contract against the consequences of his own negligence. Under United States law it is not possible to do that; it can be done under the laws of some of the States of the Union, but the policy of the United States courts does not permit it. Now, some conditions which, perhaps, would be valid under a British bill of lading may have been translated into a bill of lading printed on this side and used for shipments from this side. There may be clauses in such a bill of lading which are not valid under our law. I have frequently seen such clauses myself. There has been an attempt, for instance, to incorporate in a bill of lading, we will say, a clause dealing with one statute or another. I have particularly in mind section 4281 of the Revised Statutes, which deals with the carriage of precious stones, and the fact that the carrier shall not be liable as carrier in any form or manner if something is shipped by him as ordinary cargo and really contains precious stones or jewels and the value is not declared.

Mr. EDMONDS. I guess those sections do not mean anything. They just put them in to make it harder.

Mr. HICKOX. Well, all bills of lading are not drafted, perhaps, with a good deal of skill, and although I have no particular ones in mind, you will find that in the vast number of bills of lading that are used in the shipping trade there are some that are of ancient date and they do not conform with existing conditions. But an illegal condition in a bill of lading does not do anybody any harm. Shippers are not terrorized by those things, and so far as underwriters are concerned, well, I think that any of their attorneys would regard it as a distinct slight if it was suggested that they were disturbed by the presence of clauses in a bill of lading which they felt and knew to be illegal.

It is purely, I think, a question of insurance that is involved here, and if the risk is one which the present insurance companies do not feel like taking, and it has to be imposed on the carrier in some other way, the cost is bound to come out of the shipper, out of the goods, because there is no other source of revenue unless, as I say, you should reach the conclusion that the carrier is making so much profit that some of it could reasonably be cut down to cover this additional expense.

The nub of the whole thing is just this: That if the limitation of $100 in the bill of lading is cut out, an underwriter who insures a shipper of goods will be able, on collecting his premium when a loss occurs, to pay the loss to the shipper and then recover the loss from the steamship owner. There are comparatively few classes of injury, or conditions of injury to packages, which an underwriter pays to a shipper, which the underwriter is not able to enforce against a shipowner in due course. I speak from a considerable amount of experience on that subject. What they find in many instances is that a shipper has a cargo or a package, if you please, which is worth $1,000, and he insures it with the underwriter for—well, for $1,000—and when a loss occurs the underwriter may pay that amount, but the shipper in going to the steamship company has presented the package to the steamship company as one that was worth only $100, and he has paid a rate of freight commensurate with a $100 risk.

Mr. EDMONDS. Does he himself mark that figure "$100," or do you assume that it is worth $100 because he puts no value on the package?

Mr. HICKOX. That is the assumption, because shippers by ocean carrier know perfectly well that a clause of that kind is contained in the bill of lading, and if they do not know it they are charged with knowledge, because they can read it and they can find out. But no shipper who has ever had any experience in shipping goods for export is in any doubt whatever that such a clause is contained in bills of lading, in all bills of lading.

Mr. EDMONDS. In other words, he knows it is useless for him to place any greater value on it, because $100 is your limit?

Mr. HICKOX. No: on the contrary he knows perfectly well that if he is willing to state the true value and pay the freight on it, he can get the value stated on his bill of lading which will be exactly what he says.

Mr. EDMONDS. Do you not carry lower classes of freight for less money, the same as they do on the railroads?

Mr. HICKOX. I can not speak as to the tariff and the classes that may be generally graded, but the statements are made here by the people of the steamship companies that if application is ever made to them by a shipper to state a value on a bill of lading, $100 or $2,000 or whatever it may be, that that will always be done by the steamship company, and a rate charged accordingly, and number of these steamship people have told you that they charge an increased ad valorem rate, which varies according to the trade and to the kind of goods.

Mr. EDMONDS. All right, but you have got class A freight which you have got a price on, say, of $1 a hundred. That is based on the assumption that the package is only worth $100?

Mr. HICKOX. I think it is.

Mr. EDMONDS. You do not state so in your freight rates.

Mr. HICKOX. No; that may be so.

Mr. EDMONDS. You establish the freight rate and say the price is $1 a hundred for wool, we will say. The package may be worth $1,000, but if the man does not state any price on it, you accept it at $100.

Mr. HICKOX. It is accepted by the steamship companies at $100 and the shipper knows that, as the bill of lading states, the value of that package is represented by $100, unless a greater value is stated.

Mr. EDMONDS. But your freight classifications do not say so. You say wool is worth $1 a hundred.

Mr. HICKOX. But the freight classifications do not say anything about the value of commodities. If you think they do, then you will have to ask the practical tariff men just what the tariffs do show.

Mr. EDMONDS. We will get the tariffs.

Mr. HICKOX. However that may be, the steamship people all say that if the true value is stated by the shipper that value will be put on the bill of lading and the rate of freight charged accordingly. For instance, you speak of the tariff as showing the values. Reference has been made to silks. Some silks are very valuable and some are not.

Mr. EDMONDS. I agree with you; but silks come under 4281, a little different proposition. We will take your ordinary class A freight, $1 a hundred. If wool was class A freight, he would figure that was your rate on wool.

Mr. HICKOX. If he had a package which was worth more than $100, he knows perfectly well that he is getting a freight rate at less than the actual value, and if he wished to secure himself in case of loss he would ask for the increased value.

Mr. EDMONDS. I can not quite follow you there, because if your freight rates mean anything at all, they mean the freight rate on wool is $1 a hundred.

Mr. HICKOX. I assume that the freight rates are a general classification; and whether the tariffs say that freight rates on all kinds and classes of wool are $1 a hundred, you will have to ask one of these other people.

Mr. EDMONDS. We will not do that to-night, but we will look into it later.

Mr. HICKOX. That is a detail on which I can not speak.

Mr. LAWS. Mr. Chairman, I know it takes a lot of nerve, but I would like to ask one or two questions on this proposition if you are through.

Mr. LEHLBACH. It is 11 o'clock, and we have some other witnesses. We can not sit to-morrow. We have got to conclude these hearings to-night, and we are taking entirely too much time on minor details.

I simply wish to say, Mr. Hickox, you requested that the hearings in toto before the Senate Committee on Commerce be printed in our hearings. On examination I find that to be a pamphlet of 168 pages; and while the committee wants the record as complete and full as possible, it is very unusual to take one public document and reprint it as an insert in the hearings before another committee in another public document; and I do not know whether the committee can find a place, with due regard for the size of its own record, for the entire volume of the Senate hearings.

Mr. HICKOX. I suggested the whole pamphlet because I did not wish to select portions which I thought were applicable.

Mr. LEHLBACH. If you could prepare abstracts within a reasonable time of what is peculiarly pertinent in this Senate hearing, we will be glad to incorporate that with your remarks, but I do not think the committee will find it a practical proposition to reprint the entire document.

Mr. HICKOX. Well, I should not like to abstract somebody's testimony.

Mr. LEHLBACH. As a matter of fact, this is a public document and undoubtedly accessible to members of the committee and to others who have an interest, and can be obtained from the document rooms. If necessary, it can be reprinted, if the first edition is exhausted. So in order to have access to it, it will not be necessary to print it in our hearings anyhow.

Mr. HICKOX. Very well.

Mr. LEHLBACH. Now, Mr. Campbell, we will hear you.

STATEMENT OF MR. IRA A. CAMPBELL, NEW YORK CITY.

Mr. CAMPBELL. Mr. Chairman, I appear here representing the American Steamship Owners' Association, which is comprised of practically all of the principal American steamship companies, 75 or 80 in number, and I submit a list of the companies as they were a short time ago. I do not have the list down to date.

(The list referred to follows:)

MEMBERS OF THE AMERICAN STEAMSHIP OWNERS' ASSOCIATION.

Alaska Steamship Co.
American-Hawaiian Steamship Co.
American Italian Commercial Corporation.
American Transportation Co. (James W. Elwell & Co.).
Associated Oil Co.
Atlantic Refining Co.
Barber Steamship Lines (Inc.).
Bliss, Dallett & Co. (Red "D" Line).
Bull, A. H., Steamship Co.
Caribbean Steamship Co. (Ltd.).
Chile Steamship Co.
China Mail Steamship Co. (Ltd.).
Clinchfield Navigation Co. (Inc.).
Clyde Steamship Co.
Coastwise Transportation Co.
Colonial Navigation Co.
Crowell & Thurlow Steamship Co.
Dollar Steamship Co.
Eastern Steamship Lines (Inc.).
France & Canada Steamship Corporation.
Freeport Sulphur Transportation Co.
Garland Steamship Corporation.
Gaston, Williams & Wigmore Steamship Corporation (Globe Line).
Grace, W. R., & Co. (Atlantic & Pacific Steamship Co.).
Green Star Steamship Corporation.
Gulf Refining Co.
Gulf & Southern Steamship Co.
Harriss, Magill & Co. (Inc.).
Hartford & New York Transportation Co.
Inter-Island Steam Navigation Co.
International Mercantile Marine Co.
Luckenbach Steamship Co. (Inc.).
Mallory Steamship Co.
Maru Navigation Co.
Matson Navigation Co.
Merchants & Miners Transportation Co.
Moore & McCormack Co. (Inc.).
Munson Steamship Line.
New England Fuel & Transportation Co.
New England Steamship Co.
New York & Cuba Mail Steamship Co.
New York & Porto Rico Steamship Co.
Ocean Steamship Co. of Savannah.
Oceanic Steamship Co.
Old Dominion Steamship Co.
Ore Steamship Corporation.
Oriental Navigation Co.
Pacific Mail Steamship Co.
Pacific Steamship Co. (Admiral Line).
Pan American Petroleum & Transport Co.
Peninsular & Occidental Steamship Co.
Pocahontas Fuel Co. (Inc.).
San Francisco & Portland Steamship Lines.
Seaboard & Gulf Steamship Co.

Shawmut Steamship Co.
Smith, R. Lawrence (Inc.).
Southern Pacific Co.
Southern Steamship Co.
Sprague, C. H., & Son.
Standard Oil Co. of New Jersey.
Standard Oil Co. of New York.
States Marine & Commercial Co. (Inc.).
Strachan Shipping Co.
Sun Co.
Susquehanna Steamship Co. (Inc.).
Swayne & Hoyt (Arrow Line).
Texas Steamship Co.
Union Oil Co. of California.
Union Sulphur Co.
United Fruit Co.
United States Steel Products Co.
Vacuum Oil Co.
Warren Transportation Co.

The membership of the American Steamship Owners' Association owns about 80 per cent of all of the American privately owned tonnage engaged in foreign trade. That body of tonnage and the United States Government, through the Shipping Board, which owns the Shiping Board vessels, is vitally interested in this question. My associate, Mr. Hickox, has so thoroughly covered many of the legal aspects of it that I am not going to keep you at this late hour to go over, so far as I can avoid it, anything that he has said.

This hearing was called, supposedly, to consider the question of theft and pilferage, and it has passed from that into a very much broader question, a question which, in my judgment, concerns deeply the future of American export business and the American merchant marine, and this committee which is sitting here stands exactly in the same position as I do; it represents 80 per cent of the American merchant marine, in which I have a very small interest, so that I am speaking, I hope and I know, to people who do stand and should stand in common sympathy with me.

So far as thefts and pilferages are concerned I can not see how the members of the committee who have sat through this hearing to-day can reach any other conclusion than that the American steamship owners are doing everything that is humanly possible to cut down these losses. We have been criticized, we have almost been called names during the last two days by our critics and yet not one critic has come forward and made a single suggestion for the improvement of the condition except one, namely, to pass the responsibility on to the shipowner that he does not have to-day; and that very thing, as I hope to demonstrate before I get through, is the most fatal step that the shipper can take for his interest and that the American underwriter can take for his interest. To my mind it is, so far as the American cargo underwriter is concerned, it is walking the plank, and the efforts of your committee in the past to build up this American merchant marine insurance business is going for naught if you take this fatal step, and I hope to establish that fact before I get through.

I say they have come here and they have simply said that they had these losses. We know it. Have we participated in them? When the Ward Line told you they paid $345,000 they know something about those losses. It is true the underwriters have suffered great losses, as Mr. Rush gave the figures, but Mr. Rush did not tell you how many of those thousands of dollars that he had paid out he has recovered from the steamship companies and he is expecting to recover from the steamship companies through his distinguished and astute counsel. They are after us. There are suits galore pending, and they are pressing them just as hard as they can, and they have had many, many successful suits.

Now, the condition, as Mr. Hickox has said, is one that grew out of the war. It is a disease. It is everywhere. But are you going to apply a remedy which is worse than the disease? I say that you are if you adopt the course that these men suggest. This thing is curing itself. It is cured to-day by the reduction in these losses. Unless these steamship people are not telling you the truth, it is very evident that these losses are being reduced down very materially.

Who is the one that is being benefitted by the reduction in the losses? It is the American shipper, because he is getting his goods forward to his consignee, and he is building up his business the way he wants to. Is the American underwriter standing behind him to-day and reflecting his improved condition? Not on your life. One man sits here and says that his company is refusing to write theft and pilferage? Why? Because he is judging the present by the past. He did not even know of the improved condition that existed in the theft and pilferage situation, because he was refusing to write those losses. But he is to-day, as he told you this afternoon, paying losses in 1921 for thefts that took place in 1919 and 1920. He is judging the present by the conditions that existed at that time as they grew out of the war, during this great moral breakdown throughout the world. Instead of refusing to give the American shipper the benefit of your insurance against theft and pilferage under these existing conditions, after having charged them the rate up to 2 per cent in Europe and South America up to 15 per cent—instead of refusing to insure them at all under the improved conditions he ought to be here saying to the American shipper, "We are prepared to reduce our rates."

No, the trouble is that the American underwriter is suffering from the same thing that you are suffering and this man is suffering and the other men are suffering who bought anything during this period of high prices. What? Why, he has sold an article, namely, his insurance, for a certain premium, and he finds that his losses are exceeding his premiums. So have I. I have bought certain things during the last two years, and I find that my stuff has depreciated in value and I am taking the loss. And the American banker and the American shipper are going to take losses on the 25 or 30 or 40 million dollars worth of goods tied up down there in Buenos Aires. And so the American underwriter is taking a loss, but the American underwriter is not coming forward to-day, apparently—at least one company it not—coming forward to-day and offering the American shipper cargo insurance against theft and pilferage based on existing conditions. Now, what does he propose? He proposes, Mr. Chairman, not to cure, not to take from the Harter Act—but to put into the Harter Act by amendment—a provision which will make it possible to not write into the bill of lading the exception against theft and pilferage. The exception against theft and pilferage in that bill of lading does not excuse the carrier if he is negligent. The only effect in the world under any of the decisions of that is, as Mr. Hickox has pointed out, that if the cargo underwriter, or if the shipowner demonstrates that there has been a theft, then the burden of proof of negligence is upon the shipper. Now, let me read you a short excerpt from a decision on that point, in 162 Federal. A shipment of Brussels was short delivered. In an action by the consignee against the ship it was

held that it was incumbent upon the ship to show that the Brussels were stolen by someone not belonging to the ship, and there being no proof of robbery, the vessel is liable and release from liability can not be obtained under the Harter Act, under one of those exceptions. That is all any exception does. It is an exception which, if the shipowner, as Mr. Hickox pointed out, can demonstrate that there was a theft, it shifts the burden of proof to show that there was negligence, but if he establishes the negligence, as you implied in your hypothetical question to-day, you can win your case in any court. And Mr. Amberg will tell you that is so.

Now, what will you do? Dealing with that question—and that is the only question they have brought forward here showing a justification for increasing the insurance rates—do they come here with a proposal to deprive you of that right? No; they come here with the proposal to wipe the Harter Act off the statute books, absolutely. Now, is that legislation that this committee wants to recommend to Congress and to put through Congress in the interest of the American shipper or the American shipowner or the American Government as a shipowner? I say no. Let us see what the practical situation of that would be.

It means that the American shipowner will become liable as an insurer against all excepting two things, two causes of loss, the acts of God and of public enemies, under this proposal. It means that if an American ship is in collision because a sailor standing on lookout in foggy weather fails to report a whistle that he hears to his officer and a collision results; or if an American officer standing on the bridge of his steamer hears a distant whistle in the fog and he neglects to stop his engines when he hears that whistle, and a collision results, it means that the American shipowner would have to pay the loss on the cargo that resulted from that collision. Now, what in the name of goodness has that got to do with theft and pilferage? And yet theft and pilferage losses are the losses that these people are complaining about at the present time. They have come in here under the excuse, or whatever you might call it—under the guise of an amendment of a theft and pilferage situation, and they are asking what? They are asking Congress to take off from the statute books something that relieves the shipowner from these enormous liabilities that are on the seas, that are incident to transportation by sea, so as to make him absolutely liable as an insurer.

Mr. AMBERG. No one we represent made such a suggestion.

Mr. LEHLBACH. Mr. Merriam made the suggestion, speaking for the Wrigley Chewing Gum people.

Mr. CAMPBELL. That is the effect of your suggestion.

Mr. BURCHMORE. We all exempted errors of navigation. Mr. Campbell is correctly stating, however, I think, as the Chair understands it, Mr. Merriam's position.

Mr. CAMPBELL. I can not take up now and analyze each proposal. I have got to take your extreme proposal. But even the proposal that you people make goes substantially to that effect—or at least that Mr. Rush embodied in the statements which he submitted here, which I suppose he submitted to his counsel before he proposed it.

Mr. LAWS. He did.

Mr. CAMPBELL. Now, the American shipowner is in a position where it is a life and death struggle with him. I do not need to dwell upon

that. All I have got to do is to simply refer to the figures that were published in a yesterday morning's paper showing, as the figures reported, a $200,000,000 loss last year in operating expenses on American Shipping Board vessels. Now, the American shipowner is in a position where he has got to keep the profits in the business in order to carry it on, and if you increase his operating expenses where is he going to get the money?

Mr. LEHLBACH. $160,000,000 and no new construction under present circumstances.

Mr. CAMPBELL. Yes; I realize that. He is going to get it from one source, and that is from the American shipper. Now, what is the American shipper going to pay him for? He is going to pay him a freight rate for the transportation of his goods, and he is going to pay him an additional rate to take care of this excess limit liability. Now, there is no two ways about it. If you repeal the Harter Act or if you amend it in the way that you propose, so that you make us liable for all these various losses, you are going to leave the American carrier insuring what? You are going to leave him insuring cargo losses caused by the act of God or the public enemies.

But the proposal did not go so far as to wipe off from the statute books the limitation of liability act, so that the American shipper under your proposal would be left in a position where if the cargo ship happens to be a total loss at sea and the shipowner is free from blame he can plead his limited liability; the cargo on her will not be able to recover under that statute. Now, he has got to have protection. The repeal of this act, or the radical modification of it, is not going to give the American shipper the protection he needs in his business; it is going to do but one thing: He already under the Harter Act has the steamship company liable for negligence in the custody and delivery of the cargo; the Harter Act alone exempts him from negligence in the navigation and management of the ship, providing the shipowner has exercised due diligence to make her in all respects seaworthy. He is going to have risks, namely, against the total loss of his vessel, against the act of God and the public enemies, which he has got to insure. He pays the American shipowner an increased freight rate equivalent to the amount of insurance cost, and he has got to go to the American cargo underwriter to insure against loss by the public enemies and the act of God, and against the contingency of a total loss of his vessel under the limited liability act.

Mr. EDMONDS. And the American shipowner in some cases.

Mr. CAMPBELL. And the American shipowner in some cases. Now, the American exporter hasn't got the money to carry on all the business himself. He goes to his bank and what does he do in the ordinary course of business? He obtains money from the bank on the security of an invoice against his buyer, of a bill of lading, and to-day do you suppose that there is a bank in Chicago that is going to advance any great amount of money on the security of an insurance policy that insures only against the public enemy and the act of God and the total loss of the vessel, and the security of a bill of lading of some steamship company operating out of the port of New York, which is going to be liable for all of the great mass of causes that cause these losses? How many vessels are lost through the act of God or the public enemies? We are not at war, so you can wipe

enemies out of it. How many vessels are lost through the act of God? I should say that 999 out of every 1,000 cases of the result of negligence are carelessness in some particular in the navigation or management of the vessels. So the insurance policy that the American underwriter is going to give him is of no value to him at all in his financing, and I do not believe there is a bank in America that, if they understand the condition, that would ever advance any money upon the security of a bill of lading.

Now, all the ships that are plying the seas and all the ships that are going out of American ports are not owned by good, substantial American ship companies. We have seen that. We had the cases of two vessels told us of the Trans-Marine Co., where they had some $30,000 worth of shoes stolen from them.

Mr. LEHLBACH. Is the Trans-Marine Co. a substantial and responsible company?

Mr. CAMPBELL. Well, I do not know whether it is or not. I do not think it is.

Mr. LEHLBACH. Well, I know it is.

Mr. CAMPBELL. Then they were awfully rotten in their management, according to testimony produced here. Now, whether that is responsible or not, I do not know. But all the cargo is not going to come out of American ports in American ships. You are going to have Norwegian ships and individually-owned ships coming into American ports; you are going to have Italian ships, you are going to have Dutch ships, you are going to have English ships, you are going to have Swedish ships, and they are all going to carry cargo out of American ports. Is the banker in Chicago going to advance money on these exports on the strength of a bill of lading from the port of New York to some Norwegian steamer? Not if he is wise and he knows his business, and he will inquire into it. Why? Suppose you have a loss; supposing that your vessel is in collision and you have one of your compartments flooded and your cargo damaged going into a Central American port? Where is your security? Your security is in your ship in a Central American port.

The Norwegian owner may never send that ship back into an American port again where you can libel her. You may never see her again, and before you get a chance to libel her that ship may be sunk in a collision upon her next voyage, so she is wiped out. Do you suppose that the American bankers are going to loan money for exports upon any such security as that? Of course they are not. But if you put that system into effect the American ship owner, if he is going to survive, has got to have the increased rates to cover that risk, because, perchance, he may be liable; and if the bank will not accept that kind of security—and I have no doubt it would not—what have you got to do to finance exports? You have got to go to the American cargo underwriter and insure against those very same risks, and the result of this is going to be that unless you resort to the device of an insured bill of lading, the American shipper, through the wiping out of the radical amendment of the Harter Act, is going to find himself in a position where, if American ships are going to operate, he has got to pay an increased freight rate, and if he is going to finance his exports he has got to pay a premium to the insurance company for carrying the same risk. Now, who

gets the benefit? Why, the insurance company. If it has a loss it will take a writ of subrogation against the American shipowner if all the defenses are wiped out to the American underwriter and he has the right of subrogation, and the only defense that the American shipowner has got is the act of God or the total loss of his vessel, and 999 cases out of 1,000 are not from the act of God but are due to negligence of one kind or another, it means that the cargo underwriter is going to have a subrogation in practically all cases against the American shipowner, and what is he going to be paid for them, then, for insuring? If you please, he is going to be paid simply for doing a banking business, namely, advancing a certain sum of money to the shipper until he can reimburse himself with the certainty of recovery under those cases from the American shipowner. That is all.

Mr. BURCHMORE. It would reduce the premiums, would it not?

Mr. CAMPBELL. Will it reduce them? To a certain extent, but suppose it does, the moment you reduce the premiums, with the overhead you have got, the American underwriter is busted, as was revealed in the Berry investigation. Do you suppose that your reduction in premium is going to be commensurate with the increase in freight rates? If you think so, then you do not know the situation.

Now, I could go on at length, but I am not going to do so. But what is the proposal? Why, we have heard lots about the insured bill of lading. What is the insured bill of lading?

Mr. EDMONDS. Mr. Campbell, let me correct your statement one minute. I find on investigating that the overhead of English insurance companies is just as big as that of the American companies.

Mr. CAMPBELL. I am making no comparison. I mean all insurance companies because it is an expensive business to carry on. I say that in no sense of reflection at all, but it is an expensive business to carry on. Now, what are you going to do with your insured bill of lading? If your bank is not going to be content—and you do not know it will be—and you come here and you are making a proposal for a radical change in legislation without knowing what your banking interests are going to do or what attitude it is going to take, because they have not been consulted in the situation, but the suggestion has been made that you are going to resort to an insured bill of lading. Now, I do not know, and I do not speak with any authority, but I told Dr. Huebner a while ago that I had no doubt but what the American shipowners, if they were requested by the American shippers to put into vogue and into effect a system of insured bill of lading they would probably do so.

Now, if the American shipowner does it, the American shipowner's competitor has got to do it, namely, the Britisher, the Norwegian, the Italian, the Swede and the Dutch. And here is where, in my judgment, the American underwriter commits suicide. What is the insured bill of lading? The insured bill of lading, as I have seen it in operation by the American-Hawaiian Line, consisted—it has been some years since I have seen it—consisted of a rubber stamp put on a bill of lading stating to the effect that this cargo was insured under open cover number so and so with the Insurance Company of North America, and so on and so forth, under terms and conditions of that company. Who is going to pay for it? The shipper is going

to pay for it. Now, what does that mean? It means that the American shipowners are going out and securing those open covers in the market where they can best buy the insurance. It may be that they will buy them in the American market, but if the testimony which has been produced in these insurance hearings is any indication at all, they are going to buy it where they have to sell what they have, namely, in the open world market. The shipowner sells transportation in competition with the world, and he will buy his insurance in competition with the world, and he will buy it where he sells his goods and where he can buy it the cheapest. And the American shipowners, with all of their fleet—and we have got a good fleet despite what we have said about it—the American fleet is not going to carry all of the exports in all the American ports. Look at the situation out of the Gulf to-day in the cotton trade. Are the American Shipping Board vessels carrying all of it? Look at the coal trade. Are American vessels carrying all of that trade? Look at any of your trades; the British ships are getting their share of it.

Now, if the American shippers force the American shipowners into the insured bill of lading, competition is going to force every one of the British ships into exactly the same position, and if you do not force them to it you are getting the poorest security you could have in the world on your bill of lading, because your ship may never come back to port after she once puts to sea, and where is your security? You will chase it to the ends of the earth. But where is the Britisher? And going back to that, we have had lots of talk about the American merchant marine since the war. There has not been one chairman of the Shipping Board who has gone further than saying that America ought to have the right to carry 60 per cent of her commerce. We all believe that and we all want to see it, but we haven't got the nerve to say it—yet—that America has the right to say 60 per cent—we say 50 per cent. Who is going to carry the other 50 per cent? The British, the Swedish, the Norwegians, the Dutch, the Italians, the Spanish. Now, do you suppose for one moment that the British shipowner is going to take out this open cover to provide an insured bill of lading insurance? Do you suppose he is going to take that out in the Insurance Company of North America, the Firemen's Fund, the Federal, or any American company? No, sir; he is going to go to his English market; he is going to be just as patriotic to the English flag as we are patriotic to the American flag. He is going to insure that insurance there if he can get it cheaper—and we know he is getting it cheaper.

The insured bill of lading means—if it is put into effect at all—it means universal operation, I should say, in American foreign trade, and that means that 50 per cent of American cargo insurance is going to go abroad. Is that in the interest of your clients? No, sir. Is it in the interest of American business? No, sir. You have held hearings here, Mr. Edmonds, on several occasions, trying and striving to devise means to keep this business in America, and you were told in those hearings, and we were told, that 90 per cent of the American cargo business to-day is done in America, with American underwriters; that the business which is going abroad to-day from America is the hull insurance, because it is unprofitable to American underwriters at the rate at which the British will take it.

Why, gentlemen of the committee, the proposal of the insured bill of lading—and it is the only scheme that will give the American shipper any adequate protection—that proposal means driving out of American markets 50 per cent of the cargo insurance that you have got in here to-day, namely, 45 per cent of the total amount of your insurance, if we can believe those figures.

Now, I submit that any proposal for an amendment of the Harter Act, that proposes to bring about that condition, is vicious legislation, and I do not believe it will pass any Congress, and I do not believe any committeemen or any member of the committee will recommend legislation of that kind, once he sits down in his chamber and calmly thinks over what the situation is and has an opportunity of analyzing it, away from the disturbing influences of a lot of lawyers.

Now, that is all I am going to say at this late hour on that subject.

There is one other subject that I do want to turn my attention to, and that is this: We have had reference once in a while to the Britisher. It has been clearly stated to you, and without contradiction, excepting the suggestion that came from Mr. Englar, which was not contradiction, that under English law the shipowner has great freedom of contract and can contract against his negligence. In other words, the British shipowner under British law can by contract obtain greater exemptions from liability than the American shipowner can under American law. I do not believe there is any question about that. I think Mr. Hickox said he thought the decisions of the British courts lean more strongly in favor of the shipper over there than the shipowner.

Now, then, we have also been told that the thefts on English ships and in English trades are not as great as they are in American trades. We know Great Britain has built up a great world trade in shipping and exports under the laws she has had, and this subject of thefts and pilferages has not only engaged the attention of this committee, but it has engaged the attention of the English people and they went at it seriously enough so that they had a committee appointed by the premiers of all the British Dominions and that committee was composed of very distinguished men—some of them shipowners. In their recommendations which they have made, do they condemn the Harter Act; do they say that they are going to deny to the British shipowner any of the exemptions from liability of the Harter Act? Why, no. They say that the Harter Act is almost perfect legislation, and they point to the fact that the Canadian Parliament, in its water carriage act, has adopted substantially the Harter Act and that the Australian Parliament has done the same thing.

Now, what is the proposal here? Why, we are going to go the British one better. The proposal before your committee is in effect that now that the British shipowner has advanced to the step where he is going to say, "We are going to put on our statute books the Harter Act, which has proved such highly desirable legislation," the American shipowner, in this awful condition and American shipping is going to be forced into a position where he is going to have taken from him the exemptions from liability that the English people say "We are going to give by statute to the British shipowner."

Mr. EDMONDS. Is not that almost perfect legislation in the Harter Act, that very thing, that they think it is almost perfect because it has not that stoppage of limitation of liability?

Mr. CAMPBELL. No; because the very act they approve has in it what the Harter Act has, a $100 limitation. Now, the question of whether you are going to put in a limitation of a $100 valuation, or $250 valuation, or $1,000 valuation, is simply a question of freight rates. You have had to start on a rate-making basis, as Mr. Ryan pointed out to you, with a base rate. If you have a man shipping cotton, wheat, or flour in packages at a value less than $100—and that is about 80 per cent of the shipments, I believe—do you believe that man is going to pay on a valuation of $250 a package, or $500 a package, or $1,000 a package? No. You have to start in that business with a base rate, and your base rate here is on the value of $100 and every shipowner who has been in here has told you the American shipper can obtain a release under that clause in the bill of lading by simply declaring the increased value and paying an increased rate. But the proposal is to go the British one better and to do the American shipowner by taking away from him the exemptions from liability that England, in all of her dominions, now proposes to put upon her statute book and to grant it to them by statute instead of leaving it as a matter of common law or a matter of maritime law.

If I had the time I could go on for an hour on the various phases of this matter, but it has already been covered, and the hour is late, and that is all I am going to have to say at this time.

Mr. LEHLBACH. Does that complete your presentation?

Mr. CAMPBELL. Yes; excepting one thing, Mr. Chairman, and you were not here at the time. We have simply scratched the surface, so far as theft and pilferage is concerned. If you want to go into the question of the Harter Act, announce to the commercial industry of America and the shipowners that you are going to take up the question of amendment of the Harter Act and then you will have a discussion of it; but do not send out word you are going to take up a discussion of theft and pilferage and bring us down here and confront us with such vicious legislation as proposed here and quit there. If you want to go into the subject of theft and pilferage, if you want to go to the bottom of it, bring your committee up to New York, bring your committee up to Boston and to Philadelphia and let us go to the bottom of this whole thing. If you want to go into the question of an amendment of the Harter Act, then call a meeting here—but do not call it in the middle of July or August—and we will go into that subject.

Mr. LAWS. I do not want to detain this committee now. It is pretty late and it takes a lot of nerve to listen to an argument now.

Mr. LEHLBACH. You were not going to bring out any new matter?

Mr. LAWS. I would like to answer two or three of the propositions, particularly that Mr. Hickox referred to, because I think it is so fresh in your minds it might disabuse them on several things which I think are incorrect.

Mr. LEHLBACH. Can you do that in the space of 5 or 10 minutes?

Mr. LAWS. Yes; in 10 minutes.

Mr. LEHLBACH. As they say over in the House, you will be recognized for 10 minutes.

STATEMENT OF MR. F. S. LAWS, PHILADELPHIA, PA., OF THE FIRM OF LEWIS, ADLER & LAWS.

Mr. LAWS. In the first place, Mr. Hickox has given us the impression that it has been held under the Harter Act that a limitation of $100 has been good for many years, and that there has never been an amendment to that Harter Act, notwithstanding that knowledge; and that when Senator Nelson's bill attempted to correct it, that was fully known.

Now, the law is printed in ink and bound in buckram and anybody can find what it is; and I say to you that until 1919 there never was an affirmative decision that under the Harter Act a limitation of liability to $100 was possible. The first intimation, or the first time that subject was discussed as applicable to the Harter Act, was in this case in 1918, in the Calderon case. In that case there was a provision in the bill of lading that the shipowner should not be liable for a loss of anything over $100, and the Supreme Court of the United States, in one hundred and seventy United States, said that that was invalid because it was an attempt to deny liability in any case unless it was under $100, and the shipowner was liable.

Later on, in the latter part of 1918, a case arose of the Frederick Leyland Line in New York, in which the district court held that under the Harter Act you could not limit the liability to $100; that it was contrary to the intention of the act. That case was taken to the circuit court of appeals and there, for the first time, in 1919, it was decided that in view of the intimation made in the case of Calderon, in one hundred and seventy United States, the court felt constrained to say that under the Harter Act you could limit your liability to $100. And that is the first case of which I have any knowledge, and I think it is the first case, and I want to hear of it if there is any other case in which the courts have said affirmatively and decided that point as a point—that there could be a limitation of liability to $100 under the Harter Act.

Now, they cited the case of Hart *v.* Railroad Co. It was decided back in 1884. That was not a case arising under the Harter Act; it was a suit against the Pennsylvania Railroad for the loss of some horses, where the owner went to the railroad and made a special contract and went along with the horses, and the Supreme Court said that contract was good; and to correct that case and others like it, the Cummins amendment to the interstate commerce act was passed, and the Harter Act never figured in it in any way, shape, or form.

This question is bigger than the lines represented by these gentlemen, because there are hundreds of vessels that do not go from their wharves, there are any number of lines that do not go out of their port, and there are hundreds of vessels and tramp steamers that do not sail from the port of New York. If they take care of their losses, they need not worry about any amendment to the Harter Act; but there are other steamers and transportation lines, ocean and coastwise, tramp and other vessels, that we have to deal with in these theft cases. So they need not fear if their losses are reduced to the minimum; it is none of their concern and they need not fear an amendment to the Harter Act making the steamship owner liable for negligence and wiping out the limitation of $100 in case they are

liable through their negligence. It is only the bad ship owner who need fear. It is only the man who commits crimes who fears a criminal law. It makes no difference to the innocent man how many laws there are; it is only the man who wants to do wrong who fears them; and if they do not intend to do wrong and if they are protecting themselves against theft and pilferage, they need fear nothing in the way of an amendment to the Harter Act.

Also, the testimony has demonstrated, beyond peradventure, that when they take proper care and caution, the theft and pilferage losses amount to nothing. But they have only given you the story as it applies in New York. We have other ports along this seaboard, to which ships are going every day—not their ships, but other people's ships; not their wharves, but other people's wharves—where there is no care taken of the merchandise, where there are no precautions of any adequate nature against theft and pilferage, and against which we have no remedy whatever unless there is some amendment by which, if we prove their negligence, they are compelled to pay. So that it is broader than their cases; it applies to all cases, all vessels, coastwise, ocean barges, and everything else that are subject to the terms of the Harter Act.

We do not want the Harter Act wiped out. We want a provision in the Harter Act merely that if it is demonstrated that they are liable, that it is a case in which they are guilty of negligence, and we prove it in a court of justice, that they should be compelled to pay the full amount of their liability and the full amount of the value of the thing.

I thank you.

Mr. CAMPBELL. That is just the whole trouble with the suggestion you make—the remedy hits the good man because of the acts of the bad man.

Mr. LAWS. The good man need not fear.

Mr. CAMPBELL. But you are seeking to get a remedy for the acts of a few of the bad men by placing an undue hardship upon the good men, who are in the majority.

Mr. LAWS. But if the good man won't be hurt, and I have no question you will be, then you have nothing to fear.

Mr. LEHLBACH. I understand Mr. Goulder, of the Great Lakes, desires to be heard for a few minutes.

STATEMENT OF MR. HARVEY D. GOULDER, CLEVELAND, OHIO, REPRESENTING THE LAKE CARRIERS' ASSOCIATION.

Mr. GOULDER. There is only this: I have not attended the meetings, because I understood it was theft and pilferage. We have nothing of that sort on the Lakes. But I heard to-day there was something about the Harter Act which was involved. I find that the whole subject is foreign to the Lakes.

I noticed in the pamphlet of the hearing on the Nelson bill that the Crosby Co., the Washburn-Crosby Co., in sending on the form of an amendment to the bill to Senator Nelson in June, 1912, say:

> You do not have much difficulty in making proper adjustment for losses of the inland lake carriers.

And in their brief that was submitted with the amendment they say the same thing—that there is no trouble on the Lakes with the

Harter Act, and that bill was framed so that the Lakes were excluded, excepting there was a little question of our intercommerce with Canada, which we are permitted under our license to do as an enrolled ship, and Senator Nelson was to have that fixed. It was not to apply to the Lakes.

Now, I find the situation is the same here. As I say, I have not been in attendance on these hearings. It just happened Mr. Edmonds knew I was in the room, and I only want to say that I have not taken part and do not expect to take any part, because the Lakes evidently are not intended to be covered, and in anything that may be prepared in the way of a bill that should be religiously cared for to see that we are not drawn into something with which we have nothing to do and that can not possibly apply to us.

I have here a telegram which I would like to file for the record.

(The telegram is as follows:)

CHICAGO, ILL., *July 19, 1921.*

Hon. WILLIAM S. GREENE,
House Office Building, Washington, D. C.:

Repeal or amending Harter Act or limited liability acts on Great Lakes would be disastrous to Great Lakes marine interests. Pilfering not of sufficient amount to call for this action.

H. W. THORP.

Mr. LAWS. The shippers and underwriters appreciate the courtesy received at the hands of the committee at this hearing.

Mr. LEHLBACH. The hearings of this committee on this subject now adjourn sine die.

(The hearings were thereupon closed.)

(The following communications were ordered printed in the record:)

CINCINNATI, OHIO, *July 19, 1921.*

CHAIRMAN COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D. C.:

The Cincinnati Chamber of Commerce has officially approved the amendments to the Harter Act, which will restore common carriers liability to make good losses caused by their own tort or negligence, and prohibit their escaping this liability by means of bill of lading clauses, which limit their responsibility to less than the value of the merchandise transported, and hope your committee will recommend restoring the common-law liability by ocean carriers.

CINCINNATI CHAMBER OF COMMERCE,
MALCOLM STEWART,
Manager, Foreign Trade Department.

THE RUBBER ASSOCIATION OF AMERICA (INC.),
New York, July 22, 1921.

Hon. FREDERICK R. LEHLBACH,
Chairman, Subcommittee on Marine Insurance,
House of Representatives, Washington, D. C.

DEAR SIR: Our attention has been directed to hearings that have been held by your committee in connection with investigation of the causes of heavy losses of American export cargoes through theft, pilferage, breakage, or other damage, or nondelivery, also proposed amendments to the Harter Act.

We regret that the traffic committee of this association was unable to be represented at these hearings, but this subject, as well as the proposed amendments to the Harter Act, has had the attention of our committee.

It is our understanding that the proposed amendments to the act are designed to prohibit the settlement of claims for losses on basis of any sum less than the full actual amount of such loss or damage, whether the merchandise has been shipped at a reduced rate of freight or not, or at an agreed value which is less than its actual value, also that the burden of proving freedom from negligence in event of loss or damage shall be upon the vessel and her owner.

We believe that the necessity for adequate protection to exporters for losses other than ordinary marine risks, have been fully stated to your committee, and it is therefore unnecessary to present our views in detail, but desire to record the views of our traffic committee as being heartily in accord with the proposed amendment to the Harter Act, as well as to urge upon your committee that it take action along constructive lines to adequately safeguard interests of American exporters from losses such as are the subject of investigation of your committee.

Very truly, yours,

R. H. GOEBEL, *General Manager.*

SOUTHERN LUMBER EXPORTERS' ASSOCIATION,
New Orleans, La., July 20, 1921.

Hon. FREDERICK R. LEHLBACH,
Chraiman Subcommittee on Marine Insurance,
Committee on the Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: Referring to your letter of July 15, and your previous letter inviting the writer to appear before your subcommittee relative to marine losses and bill of lading provisions, permit me to submit the following observations:

This association is not so much concerned about losses resulting from pilferage, since lumber is not easily pilfered in quantity, as it is in the practice of the ocean carriers, and the Shipping Board seems to have lead in it, of putting in their bills of lading provisions exempting them from nearly every sort of liability for either carrying the freight safely or delivering it promptly or to its proper destination. These exceptions seem to me to violate the principles of fair dealing, and I think some of them are in direct contravention of the Harter Act. They have lead to a spirit of irresponsibility on the part of employees, great and small, of which pilferage is one of the minor results, or symptoms. If everybody is exempted from all responsibility, except to take the freight money, carefulness and service vanish. What is needed is to bring the American carriers, particularly the Shipping Board operators, to realize that they are paid for service, and must render it, and accept responsibility for the safety of the goods and their prompt and proper delivery; that their bill of lading should be short, concise, and not entirely onesided, and that the endeavor to escape responsibility for performing properly the service which one follows as a business and is paid to perform, is not a recommendation for the employment of such a one.

I quote below some clauses from the bill of lading of A. H. Bull & Co., Shipping Board operators, for your information; other operators' bills of lading contain essentially the same provisions, maybe milder, maybe more severe:

"The vessel shall have liberty hereunder, either before or after proceeding to or toward any port of discharge or transshipment, to proceed to or toward, call, enter, or stay at or off any port or ports, although not on the usual or any route to, and although in a contrary direction to or beyond the port of discharge or transshipment, once or oftener, backward or forward, in any rotation, for any purposes whatsoever, though pertaining to another voyage, and the same shall not be deemed a deviation, but deemed within the voyage hreby intended as fuly as if specificay described herein.

"The carrier shall not be responsible for delay, loss, damage, or default before, during, or after loading, transportation, or discharge, occasioned by any of the following excepted clauses: The act of God, perils of the seas or canals or other waters or of navigation or maneuvering of whatsoever nature or kind, fire or exposion wheresoever occurring, pestilence, quarant'ne, rain, spray, floods, freshets, ice, frost, fogs, or any causes beyond the carrier's reasonable control; by enemies, pirates, robbers, thieves, arrest or restraint of princes, rulers, governments, or peoples, by legal process or stoppage, war, riots, rebellions, mutinies, strikes or stoppage of labor, labor troubles on the vessel or

other craft or on shore, and whether with the carrier's employees or others, risk of craft, wharf, warehouse, hulk, cranes, or transshipment, barratry of the master or crew; by heating, shrinkage, drainage, effects of climates, ferment, decay, deterioration, putrefaction, wasting, sifting, rust, sweat of any kind or origin, change of character, drainage, leakage, breakage, loss of contents or weight, absence or obliteration of marks or numbers or address, errors of description, insufficiency of packages or wrapping, condition of packages or wrapping or injury to or soiling of the same, cooperage, mending, loss or damage arising from the nature of the goods, land damage, nor by any act or omission of the shipper or owner of the goods or his agent or representative, by stranding, grounding, collision, straining of the vessel, heat of holds, vermin, rats, sea water, wetting, fumigation of the ship, drainage, steam, brine, condensation, stowage or contact with or smell, evaporation of taint from other goods, the vessels being privileged to carry any other goods, whether hazardous or not, and also to carry live stock on or under deck, bursting of boilers, breakage of shafts, accidents to or from machinery or breakage theeof, any latent defect in hull, machinery, refrigerating machinery, appurtenances, or gear, or unseaworthiness of any kind, whether existing at the time of shipment or at the beginning of the voyage, faults, errors, or omissions in the navigation or management of the vessel, whether by the carrier's employees or pilots or others, provided that due diligence shall have been exercised to make the vessel or any craft seaworthy and properly manned, equipped, and supplied.

"The goods, whether perishable or not, are accepted by the carrier subject to delays or default in shipment, transportation, delivery, or otherwise, occasioned by shortage of conveyances or room, lack of facilities of any sort, accumulation of cargo, weather, or any conditions not shown due to the carrier's fault, and notice to shipper or others of any danger of such delay or default is hereby waived, and the carrier shall not be responsible for any such delay or default, and if loading of the goods in customary manner is delayed, or the vessel is likely to be detained she may proceed forthwith without loading or completing the loading of the goods.

"The vessel may commence discharging upon arrival immediately she is ready, without notice, at any hour of day or night, and discharge with or without intermission at wharf, in stream, or elsewhere, at carrier's convenience, any custom of the port to the contrary notwithstanding, and the collector of the port is hereby authorized to grant an order for the discharge of the cargo immediately after entry of the vessel. Whether the vessel be discharged at wharf or in stream or elsewhere, the goods may, without notice, be in whole or part discharged over side into lighters or other craft at risk and expense of shipper, consignee and /or assigns from the time the goods leave the vessel's tackles, the carrier being hereby authorized to employ or appoint lightermen, contractors and/or others, without responsibility of the company for the character or condition of any craft, for account of shipper, consignee and/or assigns, notwithstanding the latter are at hand with their own craft.

"If, by any reason of quarantine, blockade, war, hostilities, conditions of surf or weather, lack of water, Sundays or holidays, port regulations, shortage of lighters, riots, or of strikes, lockouts, stoppage or shortage of labor, of the carrier's employees or others, or by reason of any of the excepted causes mentioned elsewhere in this bill of lading, or other conditions, existing or threatened at the port of transshipment or discharge of the goods or elsewhere, the vessel is, or in the master's opinion is likely to be, prevented or delayed from reaching or from entering, or from making due delivery of the goods at the port of transshipment or discharge, or delayed at said port or in dischraging there beyond the usual time, then either with or without proceeding to or toward or entering or attempting to enter said port, the goods may be retained on board and discharged on return trip or subsequent voyage, subject to all liberties of this bill of lading, or be discharged as convenient for the vessel at any other port to which the vessel is bound or may proceed, at the risk and expense of shipper, consignee and/or assigns all responsibilities of the carrier being ended upon such discharge and full freight together with extra compensation for additional transportation being payable, and at carrier's option the goods may be carried on or forwarded to destination from any other port at which so discharged at risk and expense of shipper, consignee and/or assigns, subject in any case hereunder to the provisions in other respects of this bill of lading if transportation is performed by the carrier or to the usual bill of lading of any other carrier performing the same."

Each of the various operators has his own bill of lading, and I think no two of them are alike. They are changed from time to time. They generally cover a long page of finely printed matter. If the Shipping Board would prescribe a standard bill of lading for all its operators' use, a different one for each of the principal trades; cotton, grain, coal, lumber, etc., and eliminate the excess verbiage and unreasonable and untenable provisions, it would be a great source of relief for shippers and do more to popularize the use of Shipping Board vessels than any action that can be taken.

I trust you may find something of value in these suggestions. Appreciating the privilege of being permitted to submit them to your committee, I am

Very truly, yours,

C. E. DOBSON,
Managing Director.

GUARANTY TRUST CO. OF NEW YORK,
New York, July 20, 1921.

The CHAIRMAN SUBCOMMITTEE ON THE MERCHANT MARINE AND FISHERIES,
Washington, D. C.

DEAR SIR: In reference to your hearings for the purpose of discovering what legislation, if any, may be necessary to check the continuation of pilferage on board freight steamers carrying American products, you may be interested in an experience I had in Buenos Aires, Argentina, in January last.

I made a tour of South America for the Guaranty Trust Co. to study prevailing trade and financial conditions, and while in Buenos Aires I met at luncheon with certain American importers—managers of branch houses of American firms, as well as heads of Argentine firms and corporations—a number of whom were members of the American Chamber of Commerce there. These gentlemen related some of their recent experiences in the matter of loss of freight from the American ships carrying cargoes from American ports, and they were going so far as to seek pledges from their fellow importers not to use another American ship, especially a Shipping Board vessel, until the evils had been remedied.

One gentleman, the manager of the Buenos Aires branch of a well-known American house, said: "Do you realize that we have been losing no less than 60 per cent of several of our shipments by these robberies on board? And in cases we have carefully followed up we find the job of pilfering so deliberately done that the evidence all points to the stealing having been carefully planned and executed over a period of several days on board the vessel. Moreover, such robbery, entailing the opening of heavily bound cases, extraction of goods, the nailing up and readjustment of all fastenings, packings, etc., could never have been carried on if proper vigilance had been exercised by the authorities on board. Armour & Co. have shipped cases of perfumes, soaps, and other toilet articles down here, and lost anywhere from 30 to 60 per cent of the contents of several cases. And you can get no satisfaction because of these new nonresponsibility clauses in the bills of lading and because things have now gotten so bad that the marine insurance companies will no longer insure against theft on board our American ships."

"Why do you single out the Shipping Board boats as being the worst; that is, the most risky?" I asked.

"Because," replied the American, "the operators are frequently inexperienced or they have so little capital that they have to keep down expenses to the minimum and will not employ watchmen over the holds. Our regular American lines that send boats on this route have been almost as bad lately."

"How does that happen? Do the English lines not suffer the same trouble?"

"No; they are more experienced and they select their crews more carefully. They are better organized and they have more discipline on board. They do not attempt to avoid responsibility if we can show that the pilfering took place en voyage. Much of the stealing is done while in port here, and the English lines take precautions against that. Then, too, there has prevailed a good deal of anti-American sentiment here for some time past and the stevedores and port workers, being not a very intelligent class of men, seem to regard the American vessels as legitimate prey, assuming, also, that they have the richest cargoes."

"I have noticed that considerable lightering has to be done in this port. Is it not possible that a great deal of your trouble takes place during the transfer of cargoes?"

"Yes," replied the importer, "we know it does. We have been working on this matter for several months and we have traced down a number of these thefts so that we know quite a number of the cases of merchandise were broached between New York and Buenos Aires. As to the thefts in port, we know all about them, and they have been prolific, but we are helpless. We have been to see the chief of police, without avail. His detective bureau were familiar with all details and said if they had authority they could stop these organized, wholesale robberies in two weeks, but the 'men higher up' would not give the word. He said it was up to the port authorities, who were Federal officials. So we went to the master of the port, a Federal official, and the interview was most interesting. He said: 'Well, if you take their perquisites away from these poor stevedores and port workers, they will strike. Can not the rich American corporations stand to lose much better than these workmen?' What are you going to do with such an argument as that?

"We have complained to our diplomatic authorities here, but we have not had much satisfaction, although we understand proper representations have been made in Washington. The labor boycott is complete in Buenos Aires; in fact, almost throughout the Argentine. The unions have taken advantage of public sentiment—agitated by foreign propaganda and aided by the mistakes of American exporters, plus the high price of the dollar, falling commodity prices, congested merchandise and the like—and have not been afraid to make American employment interests the principal victims of their radical demands."

I was able to confirm this testimony as to the remarkable efficiency of the labor boycott in Buenos Aires. I talked with a prominent American packer who had recently discharged his personal chauffeur for negligence and insubordination. Three days after the man had been discharged the head of the stevedore's union called upon the packer and said: "If you don't take this chauffeur back into your employ your company will not be permitted to ship a hide out of the Argentine." And he had to obey or risk a violation of company contracts.

The West India Oil Co. (a subsidiary of Standard Oil) had a strike of plant workers at Campinas, a few hundred miles up the line from Buenos Aires, during last January.

"Out of sympathy" with these workers all the taxi and private car chauffeurs in Buenos Aires went on strike. Car owners who drove their own machines were not even permitted to procure gasolene at the West India Oil Co.'s stations. When they did, their cars were stopped by the strikers and deprived of such part of the gasolene supply as the strikers chose to take. Garages housing private cars whose owners sought gas surreptitiously from West India depots were boycotted and the garage owners finally would not admit cars whose proprietors would not lay them up in recognition of the strike. The strikers finally were joined by the port workers at La Plata, as well as Buenos Aires, and the tie-up was complete. They openly claimed the sympathy of the Argentine Government and defied both the public and the employers in all affiliated lines.

Before I left Buenos Aires a number of local steamship operators were endeavoring to procure pledges of all the shipping interests to agree to boycott the entire port of Buenos Aires for a period of three months, as the only apparent step by which public and government recognition of their rights might be attained. They later reported their inability to procure the cooperation of the United States Shipping Board in this respect.

Very truly, yours,

ALLEN WALKER.

BOSTON WOOL TRADE ASSOCIATION,
Boston, Mass., July 14, 1921.

CHAIRMAN MERCHANT MARINE COMMITTEE,
House Office Building, Washington, D. C.

DEAR SIR: We understand that your committee has assigned for hearing on July 19 on proposed amendments of the Cummings and Harter Acts which provides that the carrier will be responsible for the full value of merchandise loss or damage, provided such loss or damage is due to said carrier's negligence.

We are heartily in support of the above, as many times in the past few years the carriers have fallen behind in this bill-of-lading provision and refused to pay claims. Take, for instance, the Harter Act. Ordinarily a bale of wool

weighing more than 1,000 pounds is worth more than $100 per bale. We have found it the practice for some one to steal those bales and when we place our claim we can only collect $100. Any dishonest employee of a shipping concern can make money in stealing merchandise, and we hope that you will allow this letter to go into your records to support the above measure.

Very truly, yours,

H. A. Davis, *Manager.*

National Association of Waste Material Dealers (Inc.),

New York, July 18, 1921.

Hon. William S. Greene,
Chairman Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

Dear Sir: In accordance with suggestion as contained in your telegram of July 14 that your committee would welcome suggestions in reference to loss, damage, or pilferage, etc., on import shipments as well as export shipments, I am bringing to your attention some of the difficulties that members of this association have in connection with such losses.

If you will pardon me, I should like to state, first, that for something over 20 years I was actively connected with the Commercial Bulletin, of Boston, published by Curtis Gild & Co., and had an opportunity to become quite familiar with practically all the problems which have troubled importers in connection with the matter referred to, and in connection with my work as secretary of this organization during the past eight years, I have had plenty of opportunity to keep in touch with conditions as they have affected members engaged in the waste-material industry and I can say frankly to you and the other members of your committee that none of the difficulties which are encountered in doing business with foreign countries, particularly making purchases, compare with the difficulties brought about by the arbitrary and oftentimes high-handed methods or interpretations placed on the various laws made to cover such matters by the steamship companies, particularly foreign lines.

A committee made up of very able men engaged in this industry has had this matter up with the steamship companies for the past year or two and we have tried in every way to work out some solution of the problem, but with few exceptions we have found the steamship companies taking an arbitrary position and not showing any disposition to meet the situation in a broad-minded way with a view of remedying conditions as they exist at the present time.

I do not desire to burden you with a long letter. I learned while with the late Curtis Guild of the thoroughness with which you took up matters of this character or any matters of real importance, and I am quite sure that you and your committee will do your utmost, while being fair to the steamship owner, the insurance underwriter, to at the same time see that the innocent consignee is protected.

Our people are obliged to open letters of credit for every dollar's worth of material they import, and the steamship companies seem to feel that they can deliver the goods or not as they please, or in any shape they please.

I inclose herewith copies of letters which have been sent out either by myself or the president of this association covering this matter and I also inclose a photograph showing the way a certain shipment of rags was landed on one of the piers here in New York. When a shipment arrives in this condition the steamship companies say to our members: "We do not know how much of this is yours, but as your bill of lading calls for so many bales, we will bale up that much and turn it over to you regardless of whether it is your material or someone's else and charge you for rebaling." That charge sometimes runs up as high as $3 per bale.

A study of the situation from every angle has led us to classify the situation as follows:

First. The contracts and conditions of the bill of lading are agreed upon between the carriers and shippers in Europe.

Second. The Shipping Board has no control over the situation except as to its own ships.

Third. There is no public authority having jurisdiction in the matter of terms and conditions contained in ocean bills of lading of ships of foreign registry.

Fourth. The Harter Act states the law, but where the act is violated it is necessary for the shipper to proceed by civil action for the enforcement of the law.

Fifth. Congress could enact necessary legislation, but has not done so.

In connection with point 4 above, I would particularly call your attention to the fact that the experience of our members has been that even after they have gone into court and successfully prosecuted a claim, the steamship companies immediately formulate another clause which will take care of the situation and absolve them in the future. You will note that our president, Frank C. Overton, has emphasized this point in his letter to Senator McKellar.

In conclusion I would like to ask whether or not it is possible for this association to secure a copy of the record covering the hearings that are being held on this matter before your committee? If so, same would be very much appreciated.

Respectfully, yours,

CHAS. M. HASKINS, *Secretary.*

NATIONAL ASSOCIATION OF WASTE MATERIAL DEALERS.

June 15, 1921.

Hon. KENNETH D. MCKELLAR,
United States Senate, Washington, D. C.

DEAR SIR: Mr. H. F. Masman, traffic manager of our associaton, has forwarded to me copy of the bill you introduced in the Senate, S. 327, relating to navigation of vessels, bills of lading, etc.

I desire to express my appreciation of your efforts to safeguard shippers and consignees of merchandise carried by steamers plying between the United States and foreign ports, and to provide that the steamship lines be required to assume reasonable and legitimate responsibility for goods while in their care. I feel that if this bill is passed it will do much toward creating a more reasonable attitude on the part of the steamship lines.

I venture to hope that some day we will progress to a point where we will have a standard bill of lading worded in accordance with the law and free from individual and arbitrary clauses designed to relieve the steamship companies of any contingent liabilities. In ths connecton I would like to ask whether, if the bill introduced becomes a law, you feel it would take care of such a contingency as the following:

A bill of lading is issued for goods received in apparent good order, the number of packages mentioned and the marks and numbers. The steamship company then either writes, stamps, or has printed on their bill of lading a clause in effect as follows:

"Steamer not responsible for marks nor for numbers of bales and broken bales or short weight on account of spilling or breaking of bands during the transfer. Repacking, extra wharfage at the ports or discharge, if any, for account of the owners of the goods."

The foregoing is an exact copy of a clause taken from one bill of lading, and clauses of similar purpose are frequently stamped on bills of lading. The steamship lines under such clauses claim that they are absolved from the necessity of delivering us goods marked in accordance with the marks on the bill of lading, and endeavor to force us to accept bales which do not belong to us, which may have a different mark or no mark at all, as they claim that under the clause in their bill of lading they are not responsible for marks.

My firm has a controversy at present with the Lloyd Royal Belge, which will probably come to a lawsuit on this very issue, and the attorney for the steamship line advises us that should we win the suit they will simply go ahead and formulate another clause which will take care of the situation and absolve them in the future.

It seems to me that it should devolve upon the steamship lines to see that goods which they accept for transportation should have sufficiently clear distinguishing marks to enable them to deliver same to consignee upon arrival. We know that when goods are exported from this country the steamship companies are very particular in this respect, but apparently their methods are very lax on the other side, and if the goods are illegibly marked or the marks are obliterated in transit, the steamship authorities endeavor to place the whole burden upon the consignee, who in most cases has paid for the goods in advance and should in no event be held responsible for the shortcomings of the shipper or the steamship lines.

Even though the law may be reasonably explicit in setting forth the responsibilities of the steamship lines in connection with merchandise intrusted to their care, unfortunately there is no penalty attached for inserting clauses which may be at direct variance with the law, and the steamship lines unquestionably use such clauses as an argument in either delaying payments, or if the consignee is not posted as to his rights, rejecting a perfectly legitimate claim.

I appreciate the fact that it is the function of the court to interpret the law, but realizing that you have given this matter careful consideration, I have ventured to take the liberty of encroaching upon your time to the extent of setting forth some of our troubles and asking your opinion as to whether the proposed law would relieve the situation in connection with the particular conditions mentioned.

I can assure you your views on the subject will be deeply appreciated.

Very truly, yours,

FRANK C. OVERTON, *President.*

NATIONAL ASSOCIATION OF WASTE MATERIAL DEALERS,
June 15, 1921.

N. SUMNER MYRICK, Esq.,
Chamber of Commerce, Washington, D. C.

MY DEAR SIR: Mr. H. F. Masman, traffic manager of our association, has forwarded to me a copy of your letter to him of May 24 relative to ocean bills of lading, and stating that the subject has had consideration by the American committee, in view of the meeting to be held in London by the transportation section of the International Chamber.

While it seems reasonable to believe that any form of bill of lading which would meet the approval of ship owners, insurance writers, and bankers, would necessarily be an improvement over present methods, I can not but wish that consignees might be given an opportunity for a hearing, as it occurs to me that they may have problems which should properly have attention and which might not occur either to the insurance interests or the bankers, but which, in justice to the consignee, should have full and fair consideration. Whether the points I have in mind have had the attention of the committee or committees who have had the matter under discussion I, of course, can not tell, without seeing the preliminary draft of the bill that has been submitted. Would it be possible for you to furnish our association with any information on the subject which would enlighten us as to what has been done or what is proposed, in order that we might submit a brief or offer suggestions in the premises?

It would be impossible, in this letter, to attempt to enumerate the many methods which have been adopted by some lines to absolve themselves from reasonable liability under their bills of lading, and we are keenly interested in any efforts which are being made to improve conditons along these lines. I sincerely trust you can give us some information as to what is being done in the premises.

What we would really like to see would be standard bills of lading and uniform legislation governing same, but if we can not have both at once, we would welcome standard bills of lading provided the terms of same are fair and equitable. If your efforts should result in the acceptance of this standard bill of lading, and the results prove disappointing in practice, there would seem to be no alternative but to attempt to secure legislation which will adequately protect all parties at interest.

We will await with much interest your reply advising whether you can give us any particulars relative to the preliminary draft of the bill you are discussing.

Very truly, yours,

FRANK C. OVERTON, *President.*

COPY OF LETTER SENT TO VARIOUS ORGANIZATIONS, COVERING DIFFICULTIES EXPERIENCED BY IMPORTERS.

For some time past, and particularly during the past year, the losses and hardships which have been incurred by the members of this association in connection with the importation of rags and paper-mill supplies, having become

so acute that this association feels constrained to approach the various trade organizations and chambers of commerce in the country with a view of securing their cooperation in bringing about a change of conditions.

The trouble has been due to many causes, among which may be enumerated the following:

Insufficiency of packages, illegible marking, rough handling while in steamer's care, improper stowage, using bales as dunnage for other cargo, tearing of covers, with consequent destruction of marks and loss of contents, limited pier facilities, failure on part of steamer to segregate merchandise according to marks and bill of lading, conveying goods to lofts, involving extra expense in removing them, etc.

We realize that the first two causes of trouble mentioned, viz, insecure packing and illegible marking, are faults of the shipper and not the steamship companies, and this association is cooperating with European assocations in an endeavor to overcome such difficulties, and has already made gratifying progress in this direction.

It is our opinion that the principal cause underlying most of the trouble is the attitude of some of the steamship companies in connection with the commodities imported by our members.

At a meeting of the representatives of steamship lines, transportation companies, and importers, held at association headquarters, some of the steamship representatives claimed that they were not responsible for marks or numbers, and were not obligated to deliver the identical packages called for by the bills of lading; that the ship's responsibility ended when the goods left ship's tackle; that the steamship line was not obligated to furnish pier space for cargo; but could discharge over ship's side into barges at consignee's expense; that bales damaged in transit should be repaired at consignee's expense; that steamship was under no obligation to discharge goods where they could readily be removed by consignee, but the steamship could store them in lofts hundreds of feet away from point of delivery, and that consignee was responsible for any charges in connection with bringing same to a point where the railroads, trucks, or lighters could get possession of same.

Since early in the war there has been such a demand for freight space that apparently some of the steamship companies (not all, fortunately) have become so obsessed with a sense of their importance that they apparently feel it is within their power to dictate any terms they choose, irrespective of shipper's rights, Harter Act, or any other law.

Appended hereto are some extracts taken from ocean bills of lading which tell their own tale and show to what lengths some lines are willing to go in their attempt to protect themselves at the expense of their patrons.

Our contention is that however desirable or undesirable certain class of freight may be, when steamship lines solicit or accept any freight they immediately assume certain well-defined obligations in connection with same. The Harter Act, approved February 13, 1893, says, under section 1:

"That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

After reading this refer to the extracts of bills of lading appended hereto and see how well some of the steamship lines are conforming to the requirements of the law.

Every shipper and consignee is not posted as to his legal rights under a bill of lading, and in our opinion it should be against the law and punishable by a fine for any carrier to insert clauses in their bills of lading which are at variance with the law of the United States.

Furthermore, we favor harbor laws that clearly set forth the duty of ocean carriers, consignees, and local carriers in connection with loading, unloading, segregating, and removing goods from pier; and, finally, we feel it would greatly facilitate business and avoid misunderstandings if the steamship companies could be induced to adopt a standard form of bill of lading. We realize that it is quite possible, because of port conditions in certain countries or

in certain harbors, that it might not be practical to have one uniform standard wording for a bill of lading. If such is the case there might be several standard forms designed to meet the local conditions.

The steamship companies should insist upon having merchandise delivered to them in proper shipping condition and properly marked, and if there be exceptional cases where the condition of the goods tendered for shipment would not warrant the issuance of a clean bill of lading, then the steamship lines should have a letter of indemnity, guaranty, or bond from the shipper stating that the shipper would be responsible for any expense incidental to reconditioning the goods upon arrival and for any loss involved owing to poor marks or packing.

An ocean bill of lading is supposed, by the average merchant, to be a negotiable document. He accepts drafts and draws drafts with an ocean bill of lading as security, and if a steamship company accepts merchandise and issues a bill of lading, the line should be obligated to deliver the identical goods received, in practically the condition in which they were received. This responsibility the steamship companies are apparently endeavoring to evade.

When a shipper presents a document to a bank for the purpose of having his draft accepted, it should not devolve upon the banker to read every bill of lading through to see whether his security is worth anything. The fact that the steamship companies know that they could not legally maintain some of the clauses in their bill of lading is no excuse for inserting an improper clause.

Fire insurance companies have a standard form of policy; the railroads of the country have a standard bill of lading, and the ocean steamship companies should be obliged to issue standard bills of lading covering merchandise imported into this country.

We have no desire to work any injustice upon the steamship companies, and it is only fair to state that some of the responsible lines show every disposition to properly handle merchandise committed to their care, and to respect the rights of shippers and consignees. Neither is there any desire to offer excuses or ask special consideration for consignees who fail to do their part in promptly removing goods, and who attempt to utilize steamship piers as a warehouse for their merchandise.

We can only speak authoritatively in connection with commodities handled by members of our association, but we imagine that importers in various lines must have to contend to a more or less degree, with the same problems. We believe that all lines of trade would be benefited if the hit and miss methods now in vogue in connection with foreign shipments were supplanted with a clean-cut code of procedure, and we believe in the long run the steamship lines themselves would be the gainers by the avoidance of misunderstandings, shortages, and law suits which are bound to follow in the wake of present methods.

What this association would like to see would be ocean bills of lading and harbor laws that clearly set forth the rights and duties of steamship lines and the consignees, the terms of which would be reasonable, practical, and equitable to all parties at interest. It seems manifest that if this could be brought about, it would be infinitely preferable to present methods, and this association believes the subject to be worthy of careful consideration. We shall be pleased to have the views of your organization, and any suggestions you may have to offer in the premises.

Respectfully, yours,

——— ———, *Secretary.*

EXTRACTS FROM OCEAN BILLS OF LADING.

"Steamer has option to dispose of goods by destruction, dumping, sale, or any other way if consignees fail to take delivery within 72 hours after discharging of cargo."

"Not responsible for any shortage through weakness of packing, nor for disappearance of the marks, the consignee being obliged to take delivery of the merchandise in whatever condition it may be found when discharged."

"Goods herein mentioned to be discharged into barges or lighters immediately on arrival at receiver's expense."

"Steamer not responsible for marks nor for number of bales and broken bales or short weight on account of spilling or breaking of bands during the transport. Repacking, extra wharfage at the ports of discharge, if any, for account of owners of the goods."

"If discharge of the goods is, or in the judgment of the master or agent of the steamer likely to be directly or indirectly prevented, delayed, or rendered unusually difficult, dangerous, or costly by conditions at port of discharge or elsewhere of civil commotion, riot, insurrection, strikes, labor disturbances, or stoppage of labor of carrier's employees or others, or lockouts by carriers or others, the steamer shall have liberty, without notice, in the discretion of the master or agent, at the risk and expense at all times of the shipper and/or consignee and/or owner of the goods, either with or without, or before or after proceeding to the port of discharge, to prceeed to any port convenient to the steamer or to which it may be proceeding on the same or return voyage, or to return to port of shipment with the goods, or any part on board, and at any such port to discharge and store the goods and/or return, transport, or forward same to destination, all responsibility of the carrier as such being ended without notice immediately the goods leave the ship's tackles, and all responsibility whatever being ended upon the same being delivered to warehouse or other carrier, and the carrier hereinunder shall have a lien thereon for freight, back freight, and all expenses and charges hereunder."

"Also that if the goods are discharged on wharf or pier and are not removed by the consignee within 48 hours thereafter the consignee and/or owner shall pay a wharfage charge of $1 per 1,000 kilogram or cubic meter (ship's option) per day, or any part thereof, and the steamship company shall have a lien for the whole of said charge upon the goods, or any part thereof, which lien shall survive delivery to the consignee, and said charge shall continue and be payable for any period that the goods may be held by or in behalf of the steamship company as security for the payment of said charge."

"Also that the consignees or the party applying for their goods are to see that they get their right marks and numbers, and after the lighterman or wharfinger, or the party applying for the goods, has signed for same the ship and the owners are, respectively, discharged from all responsibility for misdelivery or nondelivery."

JOSHUA L. BAILY & CO.,
New York, July 14, 1921.

Hon. GEORGE W. EDMONDS,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We understand that your committee has under consideration amending the Harter Act so that transportation companies will be responsible for the full value of merchandise entrusted to their care.

We beg to say we think it is most important that this step be taken at the present time to help American commerce, which is rapidly falling off.

In the final analysis it is evident that the shipper must bear the expense of the loss incurred through theft and pilferage whether this added cost is included in the form of increased insurance rates or increased freight rates. This charge in the form of insurance has so enormously increased in the last year that, for instance, our insurance rates have been four times raised and in some cases are 1,000 per cent above what they were a few months ago.

The main question is how to lessen the total burden of these losses so that American commerce can compete successfully with British, German, and other foreign countries. It is evident that the insurance companies who have no direct control over the merchandise can not to any very great extent prevent theft and pilferage, whereas if his extra load is put directly on the steamship companies efficiency will be encouraged and the best managed steamship companies will do everything possible to prevent the theft and the pilferage of merchandise under their control so that their freight rates will not have to be raised to such an extent that it will turn business to better managed competing lines, and we believe in this way the total loss will very materially be reduced, with great benefit to all American manufacturing interests and merchants engaged in exporting.

It is furthermore evident from a selfish point of view to the exporter that whereas the insurance companies are very arbitrary and prefer to dispense entirely with theft and pilferage insurance, the steamship companies are not now in as independent a position, so on account of competition we do not believe that they will add to their freight rates as large a burden for the back of American commerce to bear as are insurance companies, who have not capital invested in fixed properties, which they desire to keep operating.

For this reason also we think it would be to the advantage of American commerce to have the responsibility for losses placed on the transportation com-

panies, who are in control of the merchandise, and we most heartily indorse the suggested change to the Harter Act, which, as stated, we think most important for American interests at the present stage of commerce and industry.

Very truly, yours,

JOSHUA L. BAILY & Co.,
By FISHER C. BAILY.

AMERICAN BLEACHED GOODS CO. (INC.),
New York, July 14, 1921.

Hon. GEORGE W. EDMONDS,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We understand that a hearing is to be held in a few days on the question of an amendment to the Harter Act, and we desire to go on record as strictly urging this amendment.

We think that the original intention of the Harter Act was that carriers issuing a bill of lading should be held responsible for the actual value of package of merchandise where the carrier failed to deliver the package, or where the contents of the packages had been injured, or where part of the contents were missing.

We believe this responsibility on the part of the carrier was intended in the Harter Act itself, but it appears that under various decisions the act has been given a different construction, so that at the present time the carrier's responsibility is limited to $100 per case of merchandise, the contents of which may actually be worth many times that sum.

It seems to us in every way proper that a full responsibility should rest with the carrier so that he may, while the goods are in his custody, take every reasonable precaution against theft and pilferage that the total value of the merchandise itself warrants. We think this aspect of the case is so obvious as to render it unnecessary to argue it out in detail.

We trust the amendment to the Harter Act will have the approval of your committee, and be enacted in due course.

Yours, very truly,

CHAS. WARING,
Assistant Treasurer.

CHAS. CHIPMAN'S SONS CO. (INC.),
New York, July 14, 1921.

Hon. GEORGE W. EDMONDS,
Committee on the Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We are informed that hearings are scheduled to take place before your committee in Washington next week, and we urge upon you the absolute necessity of enforcing the Harter Act, not as it has been interpreted from time to time by the courts, but as was intended by the legislators when the act was placed upon the statute books.

It is obvious that the only party who can adequately protect shipments is the steamship company, and to attempt to lessen the provisions of this act by reducing the force of this act is a direct evasion of the law.

We are heartily in accord with the contention of the shippers in this matter, and hope and urgently ask that everything be done toward relieving this intolerable situation.

Respectfully, yours,

CHAS. CHIPMAN'S SONS CO. (INC.).
B. F. LARRABEE, *Second Vice President.*

WILTON MANUFACTURING CO. (INC.),
New York, July 15, 1921.

Hon. GEORGE W. EDMONDS,
Committee on the Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We understand that your committee has consented to a conference with marine underwriters, shippers, and steamship companies concerning the prevention of losses entailed in forwarding merchandise to foreign countries.

It is well known that theft and pilferage on a large scale has caused serious losses to shippers and underwriters. We feel very strongly that the steamship companies have, in a large measure, been negligent through not giving adequate protection to merchandise entrusted to their care as carriers. The clauses in bills of lading which limit the carrier's responsibility to $100 per package have, we believe, been largely responsible for the carrier's negligence, and we feel that the carriers should be held accountable for the full value of any package which they receive for transportation, provided that in case of loss such full value is established as correct by the shipper. With the steamship companies' liabilities limited, as they are at the present time, carelessness and negligence in handling have become the rule rather than the exception, and theft and pilferage have thrived at the expense of the shipper or the underwriters insuring against theft and pilferage.

We understand that an amendment has been proposed to section 1 of the Harter Act of 1893, 37 Statutes at Large, page 445, chapter 105. We wish to give our indorsement to the proposed amendment as submitted by the Trade Protective Association, The American Institute of Marine Underwriters, and the various trade associations cooperating with them in furthering this amendment.

Yours, very truly,

WILTON MANUFACTURING CO. (INC.).
WALTER S. POOR, *President.*

C. B. HAYWARD & CO. (INC.).
New York, July 15, 1921.

Hon. GEORGE W. EDMONDS,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We are exporters of textiles to South America. We find the present limit of $100 of responsibility of carriers for loss a very serious detriment to our business and to American trade in general. Losses through robbery and pilferage cause serious delays in settlements of invoices, and, in addition, the resultant high cost of insurance places an additional charge on our goods, in some cases more than our profit.

Anything that causes American goods to be higher in price than European competing goods is a detriment to our trade at a time when we need that trade to keep our mlls going. We believe that putting the responsibility on the carrier for proper delivery is the only solution of the problem.

Very truly, yours,

C. B. HAYWARD & CO. (INC.),
C. B. HAYWARD, *President.*

WM. SIMPSON, SONS & CO.,
Philadelphia, July 14, 1921.

Hon. GEORGE W. EDMONDS,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We would beg to call your attention to the Harter Act to enforce the shipping carriers' to assume full responsibility for taking proper care of goods entrusted to them for transportation.

We are a firm of converters and commission merchants, doing a domestic and export business. Our export business in the last few years has run from a million and a half to two million dollars. We do our own shipping directly to our customers in Central and South America and the Far East. We have claims for theft and pilferage against insurance companies which come direct to us and are collected by us for the benefit of our customers. We have, therefore, had considerable experience in following up these claims and are absolutely convinced that the first thing to do is to make the steamship companies absolutely responsible for goods under their care. As it is now, the steamship companies do not assume any responsibility over and above a small minimum charge for lost bales or cases, and it is absolutely imposible to determine when the loss or theft occurs whether it occurred in the steamship docks, in the steamship hold, or in the customhouse.

The rates for insurance have enormously increased and to-day are assuming a real detriment to increased business. We realize, however, that this is not the fault of the insurance company and is directly traceable to the steamship companies themselves and to the thefts in the customhouses at the various ports in which the steamship calls. However, we do not believe it is possible to correct the theft in the customhouses until the theft in the steamship companies is first corrected.

We therefore urge you to push this bill with all possible speed.

Yours, very truly,

WM. SIMPSON, SONS & CO.,
W. S. GODFREY, *President.*

AMORY, BROWNE & CO.,
New York, July 14, 1921.

HON. GEORGE W. EDMONDS,
Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR SIR: We, as the sole selling agents for 16 of the important American mills manufacturing cotton textiles, hosiery, blankets, and underwear, which have a large foreign distribution, feel that we should go on record as approving of the proposed amendment to the Harter Act.

We do not know when a matter of more vital interest to export shippers has been put before Congress, and unless some relief, as the adoption of this amendment affords, is given to shippers, there is no doubt but what it will seriously handicap the export business, which it is recognized is essential to the future prosperity of the United States.

In the past the burden of theft and pilferage insurance, between the limited liability of the carriers as fixed by their bills of lading, of $100 per package, and the actual value of the merchandise, has been carried by the insurance companies. We are advised that the insurance companies' losses have been so enormous that it has now reached a point where insurance premiums can not be placed high enough to offset the loss, and the underwriters have recently adopted a clause which places 25 per cent of the burden of such loss on the shippers. This, as you can readily imagine, will be disastrous as it relates to export business.

It appears to us that the only way to stop theft and pilferage is to place the burden of the loss on those who can best prevent such loss, and whose interest will force them to take action to prevent theft and pilferage.

Under this proposed amendment the steamship companies will be obliged to assume responsibility for the actual value of the merchandise they accept for transportation, and we believe it was the intent and purpose of the original Harter Act to so place the responsibility, but amendments and court decisions have changed the original Harter Act so that the steamship companies no longer assume what we believe should be considered their proper responsibility.

We bespeak your careful consideration of the proposed amendment, and trust that you will lend your weight toward having same passed through Congress.

Respectfully, yours,

AMORY, BROWNE & CO.

BOSTON INSURANCE COMPANY,
Boston, Mass., July 18, 1991.

CONGRESSMAN FREDERICK R. LEHLBACH,
Chairman Subcommittee on Marine Insurance,
House of Representatives.

DEAR SIR: In regard to the hearings on July 18, 19, and 20, held by your committee, in respect to the amendment of ocean and railroad bills of lading, I regret exceedingly that I am prevented from attending the hearings through my engagements at Plymouth (my home town), arising from the tercentenary celebration.

I am very much interested in the bill in question, and believe that action should be taken as suggested to increase the responsibility of the carriers.

In the last three months the two insurance companies, of which I am president—the Boston Insurance Co. and the Old Colony Insurance Co.—have had claims presented to them for losses by pilferage of over a quarter of a million dollars.

It is impossible for us to give merchants and bankers the protection which they desire against the risk of pilferage and thievery, unless some check can be put on this ever-increasing loss. I can see no way of stopping pilferage except by making responsible for such losses the parties who have the merchandise in their care. Outside of careful packing, the shipper has no way of protecting his goods after they are delivered to the carrier. The insurance company has no way of protecting the goods. The only party who can protect them is the carrier.

It has been claimed on behalf of the carriers that it is unfair to make them responsible for the pilferage, because some of the pilferages occur while the goods are in the hands of teamsters and forwarding companies before and after delivery to them. The answer to this, to my mind, is once you make a carrier responsible he will require that the packages are properly secured and sealed, so he can be satisfied that the goods are intact when delivered to him, and the party to whom the first carrier in turn delivers the goods will use equally good care to be sure that the packages are intact when delivered to him.

Aside from the placing of the responsibility for the financial loss, this making each carrier watch carefully the condition of the packages while in his care, will have a tremendous effect in this way: To-day the thief rifling a package feels practically certain that the actual loss of the goods will probably not be detected until months afterwards, when the goods are delivered at some foreign port, after going through the hands of various carriers, customhouse employees, teamsters, etc., so that it will be practically impossible to determine just where and when the theft occurred, making it impossible, when the actual loss is determined months afterwards, to bring it home to the actual thief.

With each carrier responsible for the theft while the goods are in his care, the carrier will insist on the goods being properly secured so that there can be no concealed pilferage, and will detect any loss at once.

The carriers should be responsible for the losses that occur while the goods are in their possession. To-day they limit their liability to a small amount or else insert in their bills of lading clause releasing them from all liability, such as the following:

"The said line shall not be liable for loss or damage before, after, or during loading or discharge, occasioned by * * * robbers or thieves, of whatsoever kind, whether on board or not or in the service of the owners * * * drainage, leakage, breakage * * * and that the carrier shall not be concluded as to correctness of statements herein of weight, quality, quantity, gauge, contents, and value."

Why should a merchant be required to put his merchandise for transportation in the care of a carrier who declines or limits his responsibility arising from his lack of care of the goods? Once a carrier is made responsible for the loss of the merchandise in his care, as he should be, then this pilferage will be stopped. Until such action is taken pilferage will be a great menace to the business of the country, representing an increase in taxes to the merchant in the form of loss of his goods or premiums for insurance.

I see no other way of stopping this terrific economic loss except by making responsible the only party who can exercise proper supervision over the goods to safeguard them.

Yours, very truly,

WILLIAM R. HEDGE, *President.*

NORTH ATLANTIC & WESTERN STEAMSHIP CO.,
Boston, Mass., July 18, 1921.

MERCHANT MARINE COMMITTEE,
Washington, D. C.

GENTLEMEN: Under separate cover I forward you our views on the matter of loss of cargo through pilferage, breakage, or other damage and nondelivery. This was written at the request of Mr. Davis, secretary of the Maritime Association, Boston Chamber of Commerce.

Yours, very truly,

E. D. SPROUL, *Marine Superintendent.*

JULY 15, 1921.

MEMORANDUM ON THE SUBJECT OF LOSSES ON SHIPS, DUE TO PILFERAGE, BREAKAGE, AND SHORT DELIVERY OF CARGO.

I. PILFERAGE AND THEFT.

Assumption.—That among all bodies of men, whether longshoremen, checkers, or crew, there will be some who will have the tendency to steal unless prevented by the difficulty of breaking the package or the fear of detection and punishment.

(A) *On the dock.*—To cut down losses by pilferage, the essentials are:

1. A well-lighted shed, free from all dark corners and easy hiding places.
2. Experienced watchmen whose honesty has been tested, who are acquainted with the methods of longshoremen, and who are paid a wage sufficient to live on and to do away with the necessity of supplementing it by conniving at thefts of cargo.
3. A single exit, and a system of passes, so that no team or individual can leave the dock with any package unless authorized.
4. A shed entirely locked at night when not in use, or an outside patrol to guard against theft of cargo by boat. (There are cases where cargo on dock has been stolen by butting through floor of dock from below and removing it by boat.)
5. A locker where all cargo peculiarly liable to pilferage may be stored until the instant that it is loaded to the ship.

(B) *On the ship.*—

(I) To cut down losses by pilferage among longshoremen—

1. Watchmen in all holds where cargo liable to pilferage is being loaded.
2. Load all such dangerous cargo together, if possible against bulkhead and away from ladders used by longshoremen, bury cargo with other cargo before work is finished, or at any rate before vessel sails for another port of loading.
3. Lock all manholes at close of work and place reliable watchman on ship to see that no hatches are disturbed.
4. Place gratings in all ventilators leading to holes.

(II) To prevent pilferage by crew—

1. Keep all manholes locked during voyage.
2. Open hatches only under supervision of officers.
3. In cargo compartments which must be entered by members of crew for the purpose of getting stores, etc., stow all cargo liable to pilferage away from reach and solidly blocked in.
4. Place gratings in ventilators.
5. Examine all bags, etc., of crew leaving ships.
6. Keep sharp watch over side to avoid theft by boat.

In general, the use of cartons to pack shoes, canned goods, etc., is to be deprecated, and the use of solid cases well strapped on ends is to be urged.

Also, on the subject of lessening pilferage by longshoremen, prompt prosecution and the imposition of severe penalty by the judges should have a deterrent effect. Some headway can also be made by endeavoring to get the same men to work on the ships and never having men convicted of stealing in the past. Efforts have also been made in the opposite direction to prevent by punishment, viz: To inaugurate a sort of honor system whereby longshoremen will prevent each other from stealing, this desirable end being apparently reached by making the men so contented by the use of rest rooms, lockers, shower baths, private exits from the docks, etc., that they will be ashamed to steal.

II. BREAKAGE.

Two main points must be considered: (A) Nature of containers; (B) methods of handling.

(A) On this point it would seem to be necessary to conduct a campaign of education among shippers which would explain to them the nature of strains and stresses to which packages are subjected in loading to the ship in slings and the pressure which they undergo in stowage in ship's deck or holds.

1. Cartons of whatever nature and whatever the contents are too frail to withstand pressure of sling in loading, and the unavoidable handling in stowage and discharge, or their own weight in the slings.

2. Cases must be made strong enough to withstand the weight of their contents and should be strapped.

3. Crates of machinery, etc., must be thoroughly protected, and, if set up, parts liable to injury carefully covered, and must also be not only heavily skidded, but well braced with upright cross braces between uprights and heavy top boards to resist the inward pressure of sling during the lift.

4. Crates of other goods, such as furniture, etc., are not acceptable due to their susceptibility to damage from other cargo, either by scratching or gouging, or actual breakage.

(B) Much breakage may be avoided by the use of proper gear, e. g., can boards or airplanes for canned goods will partially do away with breakage of cases and bent cans caused by the sling alone, the use of nets for the loading of light cartons or light unprotected cargo, canvas slings on bags, etc.

In handling, the use of the burton fall instead of stages, care of winchmen not to "singe" the fall in loading or discharging, the use of light skids in hold for dragging loads from bulkhead to the square of the hatch, avoidance of stanchions in dragging out loads, the use of trucks in decks for bringing loads out of long alley way, the use of dunnage in the square of hatch when landing loads in loading, or from square to ends when rolling in cases to be stowed, and the use of dunnage in stowage to distribute the weight and pressure are some of the methods which will lessen breakage.

III. SHORT DELIVERY.

Short delivery may be due to one or more of the following causes:

A. The cargo may never have been received.

B. The cargo may have been received but never loaded.

C. The cargo may have been received and loaded, but never discharged.

D. The cargo may have been received, loaded, and discharged, but delivery thereof never properly accomplished.

(A) Th basis of the bill of lading is the dock receipt, as it is at the dock that cargo is received, tallied, and marks checked. To begin with, then, the bill of lading must follow the dock receipt, and not some shipper's document, such as railroad bill of lading, forwarding shipping paper, invoice, etc. It is at the dock, then, that the error must be looked for, and here the human element comes in, for errors can be avoided only if the tallyman is honest, conscientious, and painstaking. He must take all marks and numbers on every package, for by tallying every mark and number he lessens chances for error. If a discrepancy exists, it must be verified by an independent tally by chief clerk, and checked again upon loading to steamer. When large lots are received by team a separate tally must be made of each load and kept as part of the original records, for the chief clerk may make an error in his additions and issue final dock receipts for more than the actual amount (and it must be remembered on this point that, though the bill of lading is prima facie evidence of receipt and of ship's responsibility for quantity shown, it may be refuted by proof that the total amount was not actually received).

On this point, too, what was said about the system of team passes and a single exit under I (A), 3 above, applies here as well and otherwise connivance with teamsters would be possible.

(B) Under this head comes all that was said under pilferage and theft above. To locate the loss it is necessary to make a careful tally of freight into the ship and where theft or pilferage has been discovered make the proper notation, giving a copy of all tallies into ship to first officer, and making him responsible as far as possible for delivery of all cargo actually loaded.

(C) Under this head we may refer to what was said under pilferage and theft on the ship.

In addition, of course, we have the possibility of loss due to stevedores in discharge. Careful record must be made of any such loss and stevedore held responsible. In the Current News there is a case before the underwriters of short delivery of a piece of machinery weighing 50 tons which was proven to have been actually loaded into ship and some years ago there was a case of short delivery of a large boiler on a ship from New York to South Africa, clearly a case where the piece had been lost overboard and short delievry reported in an attempt to clear those responsible.

(D) Losses due to this cause may be occasioned by pilferage on the dock or theft from the dock, both of which have been covered before under pilferage and theft on the dock; or by errors in the tally or tally clerks, also covered sufficiently above.

H. PARKMAN, Jr., *Dock Superintendent.*

N. B.—In the above discussion we have not considered the problem that arises from the fact that the case received as containing shoes, for example, may actually contain shoe boxes filled with bricks and excelsior substituted by the shipper or by theft en route to the dock. What the remedies for this evil are I do not know.

On the subject of insurance, if insurance companies ceased to write theft and pilferage insurance there would certainly be a tendency on the part of the steamship companies to exert greater effort to prevent and detect pilferage, and, per contra, if claims are delivered on account of insufficiency of package, and lack of straps, shippers would be forced properly to case their goods so as to make pilferage more difficult.

H. P., Jr.

APPENDIX 1.

REPORT OF THE IMPERIAL SHIPPING COMMITTEE ON THE LIMITATION OF SHIPOWNERS' LIABILITY BY CLAUSES IN BILLS OF LADING AND ON CERTAIN OTHER MATTERS RELATING TO BILLS OF LADING.

We, the imperial shipping committee, acting under the first part of our terms of reference, have inquired into complaints (*a*) from the Association of British Chambers of Commerce, in the shape of a resolution passed at Glasgow on July 7, 1920, in favor of legislation to prevent the limitation of the liability of shipowners by clauses in bills of lading; (*b*) from the Imperial Council of Commerce, in the shape of certain resolutions to the same end passed at Toronto on September 21, 1920; and (*c*) from other bodies to the same effect.

Having regard to the terms of our appointment, we beg leave now to report our conclusion upon this subject to all the Governments of the Empire, since they are all concerned.

1. The question of the limitation of shipowners' liability by clauses in bills of lading was first brought to the notice of the imperial shipping committee by the Association of British Chambers of Commerce in a letter dated July 29, 1920, which called attention to the following resolution adopted by that body at their quarterly meeting held at Glasgow on the 7th idem:

"That the Government be urged to introduce legislation whereby it shall be enacted that any stipulation inserted in a contract for carriage by sea by which the liability of the carrier to accept a proper measure of responsibility for the safe custody and delivery of goods intrusted to his charge for carriage is restricted or eliminated shall be null and void. The attention of the Government is invited to the fact that legislation on similar lines has already been enacted by the United States of America, the Dominion of Canada, the Commonwealth of Australia, and other countries,[1] for the protection of shippers, and that the Dominions Royal Commission, in its report presented to both Houses of Parliament March, 1917, unanimously recommended legislation on the lines in question."

2. Letters in support of the resolution were received from the Liverpool and Dublin Chambers of Commerce, from the Liverpool Underwriters' Association, and the Association of Insurance Brokers and Underwriters in Glasgow.

3. In October, 1920, the Imperial Council of Commerce brought to our notice the following resolutions on the subject of liability clauses in bills of lading which were passed at the congress of chambers of commerce of the British Empire of Toronto in September, 1920:

"That in view of the multiplicity of saving clauses inserted in bills of lading by all shipping companies this congress is of opinion that legislation should be introduced into the British House of Commons and the Parliaments of the various Dominions upon the lines of the Harter Act of the United States of America.

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[1] For particulars of the legislation see Appendix II, p. 18.

"That bills of lading be framed on more equitable lines, and, in particular, that shipowners should not be permitted to exempt themselves from liability for ship's negligence.

"That, with a view to uniformity of practice, so that past and future legal decisions may be of far-reaching value, the various oversea Dominions that have enacted 'sea carriage of goods' act or acts of that nature be asked to repeal same and enact in lieu thereof the United States Harter Act, and that all other parts of the Empire, including the United Kingdom, be invited to place an act similar to the Harter Act on their statute books, thus creating within the Empire uniformity of shipowners' responsibility for the receipt, care, custody, and delivery of cargo intrusted to them.

4. The Dominions Royal Commission made definite recommendations upon this subject during the war,[2] but owing to war conditions no action followed, and having regard to the large amount of interest evinced in commercial circles and to the fact that we were specially constituted and appointed to deal with such questions, we felt that it was incumbent upon us to review the position with the object of reporting upon it as our terms of reference required. Inasmuch as the evidence given before the Dominions Royal Commission was available to us, we thought it sufficient to take typical evidence to bring our material up to date, and accordingly invited the Association of Chambers of Commerce, as representing the shippers and importers; the above-mentioned underwriters' associations; the committee of Lloyds; and the London Institute of Underwriters, as representing the insurance interests; and the Chamber of Shipping of the United Kingdom and the Liverpool Steamship Owners' Association, as representing the shipowners, to nominate witnesses to give evidence before us. In so doing we suggested that the evidence given before the Dominions Royal Commission should be taken into consideration, and there was general concurrence in this suggestion.

5. We have obtained the views of the Canadian, Australian, and New Zealand Governments in regard to the success or otherwise of their legislation, and we refer to their replies at paragraph 26 below.

6. The evidence taken by the Dominions Royal Commission on the subject of the limitation of shipowners' liability by clauses in bills of lading was as follows:

(1) In Australia in May, 1913, that of Mr. Percy T. Berry, member of the Melbourne Chamber of Commerce; of Mr. S. J. Jacobs, Mr. Alfred Le Messurier, and Mr. Caleb Allen, all of the Adelaide Chamber of Commerce, and of Mr. William Leslie, of the Perth Chamber of Commerce. (See pp. 222 to 245 of Cd. 7171.)

(2) In London in January, 1914, that of Mr. E. B. Tredwen, chairman of the Australasian section of the London Chamber of Commerce; of Mr. H. R Miller, of the Chamber of Shipping of the United Kingdom; and of Mr. J. L. Wilson Goode, of the Manchester Association of Importers and Exporters (see pp. 34 to 63 of Cd. 7351); the evidence on the subject of bills of lading clauses is intermingled with that on freights); and in June, 1914, Sir Norman Hill, secretary of the Liverpool Steamship Owners' Association, gave evidence on this question. (Again, together with evidence on other subjects, see pp. 15 to 40 in Cd. 7710.)

(3) In Newfoundland Mr. H. W. Le Messurier, deputy of customs of Newfoundland, and Hon. John Harvey, M. L. C., of Messrs. Harvey & Co., merchants and shipping agents, gave evidence in July, 1914. (See pp. 30 to 32 of Cd. 7898.)

(4) In Canada evidence was taken in September, October, and November, 1916, from the following witnesses: Mr. J. J. Shalcross, of the Victoria Board of Trade; Mr. W. F. McClintock, claims agent for Messrs. Kelly, Douglas & Co., members of the Vancouver Board of Trade; Mr. T. E. Marshall, manager of the traffic department, Toronto Board of Trade; Mr James E. Walsh, manager of the transportation department, Canadian Manufacturers' Association; Mr. James Carruthers, of Messrs. James Carruthers & Co., grain exporters; Mr. Z. Hebert, of the Montreal Board of Trade; Mr. Th. Wardleworth, of the National Drug & Chemical Co. of Canada; Mr. Thomas Robb, secretary of the Shipping Federation of Canada; Mr. G. B. Ramsey; and Mr. O. W. Bodard. (See Cd. 8458, pp. 314–368, passim.)

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[2] Pars. 595–603 of the final report of the Dominions Royal Commission, dated Feb. 21, 1917.

7. This evidence we have duly considered, and in addition we have examined the following witnesses:

(1) Mr. E. B. Tredwen, chairman of the merchants' committee of the Australasian section of the London Chamber of Commerce and of the Australasian Merchants' Association, senior partner in Messrs. Gilbert J. McCaul & Co., merchants, of London, on October 21, 1920.

(2) Mr. J. W. Allen, J. P., president of the Hull Chamber of Commerce, senior partner in T. W. Allen & Sons, timber merchants, of Hull, and chairman of the lumber section of the timber trade federation of the United Kingdom, on October 21, 1920. (Mr. Tredwen and Mr. Allen appeared in response to our invitation to the Associated Chambers of Commerce to nominate witnesses.)

(3) Mr. J. P. Rudolf, chairman of the council of the Liverpool Chamber of Commerce, underwriter of the Standard Marine Insurance Co., and member of the committee of the Liverpool Underwriters' Association, who appeared in response to our invitation to the Associated Chambers of Commerce, but also on behalf of the Liverpool Underwriters' Association and the Glasgow Association of Underwriters, on October 21, 1920.

(4) Sir Norman Hill, Bart., secretary of the Liverpool Steamship Owners' Association, and on their behalf, on October 28, 1920.

(5) Mr. L. C. Harris, of Ellerman & Bucknall Steamship Co., on behalf of the Chamber of Shipping of the United Kingdom, on October 28, 1920.

(6) Mr. E. A. Nicholls, of the London Assurance Corporation, on behalf of the Institute of London Underwriters, on November 4, 1920.

(7) Mr. S. A. Boulton, chairman of Lloyd's committee, and on their behalf, on November 4, 1920.

(8) Mr. F. H. Carey, claims adjuster to the London Assurance Corporation, nominated by Lloyd's committee, on November 18, 1920.

(9) Mr. J. S. McConechy, joint honorary secretary to the Manchester Association of Importers and Exporters, and on their behalf, on November 18, 1920.

(10) Mr. Richard D. Holt, J. P., of Alfred Holt & Co., shipowners, of Liverpool, on January 7, 1921.

8. In addition to the expressions of opinion by commercial bodies on the subject of the limitation of shipowners' liability by clauses in bills of lading which are quoted in paragraphs 1 and 2 above, we have received other important communications as follows:

(i) A resolution adopted at a meeting of the agents general for the whole of the Australian States held on December 22, 1920, in favor of legislation by the Imperial Parliament on the basis of the Australian sea carriage of goods act, 1904.

(ii) Recommendations (through the Associated Chambers of Commerce of the Commonwealth of Australia) from the Adelaide Chamber of Commerce in favor of—

(*a*) The universal adoption of the provisions of the sea carriage of goods act, 1904;

(*b*) The adoption of a just and equitable model form of bill of lading;

(*c*) Measures to secure that shipowners shall afford the consignees sufficient opportunities for the establishment of just claims and the settlement thereof by agents;

(*d*) The adoption of certain requirements in connection with through bills of lading.

(iii) A communication from the Federation of British industries calling attention to the conclusions of an important meeting of certain of their members held at Manchester on December 10, 1920, at which it was urged that bills of lading should be simplified and rendered as uniform as possible, and in particular expressing the views that "the clause stating that shipowners are not liable for losses of goods * * * capable of being covered by insurance is a direct premium on carelessness," and that "bills of lading should not be altered without previous consultation with the other parties to the contract."

(iv) Communications, containing similar references to the subject, from bodies associated with particular trades, such as the Auckland Importers' and Shippers' Protection Association (Ltd.), the Association of West African Merchants, and the Barbados and Karachi Chambers of Commerce.

9. We have thought it unnecessary to print at length the additional evidence taken by us, although it has been duly recorded. We have, however, had prepared, and we append to this report, a full digest of the arguments advanced on behalf of the three principal interests concerned (Appendix I).

10. We do not propose to repeat in the body of this report many of the minor points which find their place in the appendix, but shall confine our discussion of the subject to the broad considerations which have decided our judgment and brought us to unanimity. These considerations fall into three categories:

(*a*) Commercial considerations.

(*b*) Uniformity of law and practice.

(*c*) Imperial considerations.

11. *Commercial considerations.*—By the common law of England the shipowner is responsible for the safe carriage and delivery of goods committed to his charge as a common carrier, unless prevented by certain definite causes, such as the act of God or the King's enemies, but there is nothing in English law to stop him from contracting out of the whole or any part of his liability, and by a practice which has gradually extended since about 1880 British shipowners do habitually in their bills of lading contract themselves out of their common-law liability to a large extent.

12. The liability of the shipowner relates to risks of two kinds. There are "navigation risks," due to perils of the sea and other incidents of navigation, and there are "carriers' risks," which are those of loss or damage to goods arising in the course of their receipt, stowage, custody, and delivery by the shipowner and his servants. The present demand for legislation is to prevent the shipowner from contracting out of his liability in respect of "carriers' risks" only. By general consent of all the parties concerned he should continue to be free to relieve himself of his liability in respect of "navigation risks."

13. The evidence before us has been to the effect that although shipowners protect themselves in their bills of lading from legal liability, yet the practice among many of them is, in fact, to pay reasonable claims for loss or damage to goods. Such practice is not, however, universal, and on behalf of the shippers it was urged that claims should be paid as of right and not merely ex grat a.

14. Freedom of contract, which is the basic principle of modern commerce, assumes, of course, that both the parties to a bargain are free. It has been represented to us, on the part of the shippers, that they are not wholly free when contracting with shipowners, because the liner companies or conferences enjoy in many cases a position approximating to monopoly, and that as a consequence shippers are not able to obtain the elimination of the clauses objected to without the help of legislation. We do not think it necessary to discuss in this connection whether a monopoly or quasi monopoly does in fact exist in some trades and in what degree. Statements from various points of view on this subject will be found in Appendix I. We are content to accept the broad fact that from whatever cause the practice of inserting the contracting-out clauses in bills of lading continues, notwithstanding that there is a widespread and persistent demand among commercial organizations throughout the Empire for legislation to render such clauses illegal.

15. We find ourselves, therefore, in this position, that on the one hand the shippers submit to the insertion of the clauses in question, and yet, through their organizations, generally object to them, and on the other hand the shipowners insert the clauses, and yet many of them, and perhaps a majority, do not as a rule avail themselves fully of the rights which they so obtain. It seems to follow from such a situation that there is at any rate a prima facie case for legislation in the sense asked for, and that, as the Dominions Royal Commission remarked in their final report, such legislation would appear likely to be a protection rather than otherwise to such shipowners as make it a practice to pay reasonable claims.

16. It will be admitted, we think, that there are good general grounds, for obvious economic reasons, for maintaining as far as possible the rule that a contractor should be responsible for the negligence of his servants. All agree, however, that there is no ground for interfering with the shipowner's freedom of contract with regard to his "navigation risks," and it is argued that it would make for simplicity if he were also allowed to continue to contract himself out of his "carriers' risks," thus, in effect, throwing upon the shipper's underwriter the whole of the risks of every kind. Such simplicity does not, however, under present conditions appear to be attainable, for since pilferage has become rife underwriters, both in London and Liverpool, have not only refused to cover "risks of whatsoever kind," but have also refused to cover more than 75 per cent of the losses due to pilferage. Their object, it was explained to us, was to make shippers more careful in packing and shipowners more diligent in supervising their servants.

17. A more serious matter at first sight is the fact that as a result of the proposed change of law the shipper would find himself, in the event of loss, with a claim only against a shipowner instead of an indemnity under an insurance policy. We can not believe, however, that this argument has very much practical force in view of the strong financial position of the great liner companies. It may be assumed that other shipowners would cover themselves by insurance with underwriters or mutually. None of our witnesses contemplated that shipowners' liability should extend beyond a reasonable limit of value, an important point to which we shall refer again.

18. We have considered the apprehensions expressed lest the passing of such legislation should operate to the detriment of British trade in competition with that of other countries in which bills of lading can be issued free from any such restriction. We are inclined to think that the fear of such foreign competition has little substance. Our chief competitor under present conditions is the United States, and there the Harter Act forbids contracting out. In Japan, article 592 of the Commercial Code provides that "the shipowner can not even by an express agreement be exempted from liability for damage caused by his own fault or by the bad faith or the gross fault of a mariner or of any other person employed or by the unseaworthiness of the ship." In France, Sweden, and Norway the present legal position is, it appears, very much as in the United Kingdom, but there has long been and still is active pressure in France for legislation on the lines of the Harter Act, and in Scandinavia generally the question of obtaining similar legislation is being actively discussed. According to the report of the Dominions Royal Commission, the largest German companies, as the outcome of agreement between them and the shippers, adopted before the war a bill of lading which accepted on behalf of the shipowners the carriers' risks. Nor should it be forgotten that in practice British shipowners already pay a large part of the claims made against them.

19. It was suggested to us in evidence that had refrigerated carriage not been well established in the trades affected at the dates of the passing of the Harter Act and of the similar Dominion acts, their provisions might have prevented the initiation or development of that method of sea transport, as the shipowner would have refused to bear the unknown risk. It was urged that in any new legislation provision should be made for the transfer of liability to the trader in respect of similar developments in the future. We were impressed by this argument and shall refer to it again later, as also to the need of so limiting the terms of legislation as to avoid any hardship on the shipowner, such as the attachment to him of liability for matters in regard to which he has no real control.

20. Subject to the necessary safeguards to meet the difficulties indicated, which are dealt with in subsequent paragraphs, we feel that on commercial grounds there is probably an advantage to be gained by the proposed change.

21. *Uniformity.*—The advantages of uniformity in the shipping laws of the several countries which form the British Commonwealth of Nations are manifest. At present there is legislation on the subject of shipowners' liability in respect of carriers' risks in Canada, Australia, and New Zealand, and there is no corresponding legislation in the United Kingdom, India, South Africa, or Newfoundland.

22. An analysis of the three Dominion acts, and also of the Harter Act, is attached as Appendix II. It will be seen that they are far from uniform in their provisions.

23. The chief difference between the Australian act and the rest of the legislation is the provision of section 8 (1) to the effect that in every bill of lading there shall be an implied warranty of seaworthiness at the beginning of the voyage, while the other acts are satisfied by the exercise on the part of the shipowner of due diligence to see that the ship is seaworthy in every respect and is properly manned, equipped, and supplied.

24. We should perhaps point out that the difference in effect between the exercise of due diligence and the absolute warranty of seaworthiness is that the former makes allowance for defects which could not have been discovered by the exercise of ordinary care, while the latter does not. We think that the former is the more reasonable requirement, since the principle that the shipowner should not be liable for what is not within his control is conceded in the matter of navigation risks.

25. We think that the assimilation of the Australian law on this point with that of the rest of the Empire should be part of the uniformity to be effected.

26. We have, as stated above, consulted the Canadian, Australian, and New Zealand Governments in regard to the success or otherwise of their legislation, and their replies are to the effect that there is general satisfaction in all these

Dominions with the way in which the several acts have operated. Moreover, in each of these Dominions there is a tendency to press for the extension of the existing law either to inward shipments or in some other way. It is hardly necessary to point out what difficulties would arise if any Dominion sought in this way to apply its own law to the bills of lading issued elsewhere. It is evident that uniform laws throughout the Empire would secure the object in a much better way so far as interimperial trade is concerned.

27. We attach much weight to the advantage of uniform law on this subject throughout the Empire.

28. *Imperial considerations.*—A greater boon to the British Commonwealth than uniformity in the laws of its several parts, though this is in itself no mean aid to solidarity, would be the removal of that discontent on the part of shippers in regard to shipping conditions generally, which undoubtedly exists, more especially in the Dominions. Though the majority both of shippers and shipowners must recognize on any far-sighted view that their interests are not divergent, yet there must always be occasions for disagreement between the two, and it would appear that the character of these clauses in bills of lading has served as a rallying point for discontented shippers.

29. While the shipowners are very largely centered in the United Kingdom, in the Dominions the shippers predominate, and misunderstandings between the two commercial interests tend therefor to create divergencies between the views of the countries themselves.

30. It appears to us of the highest importance that all causes of dissension between these great interests, whose harmony is essential to the strength of the British Commonwealth, should be promptly removed as they arise.

31. *Conclusion and recommendations.*—As the result of the considerations outlined above under the three several heads we have come unanimously to the following conclusion:

That there should be uniform legislation throughout the Empire on the lines of the existing acts dealing with shipowners' liability, but based more precisely on the Canadian water carriage of goods act, 1910, subject to certain further provisions in regard to—

(i) Exceptional cases in which goods should be allowed to be carried by shipowners at owner's risk;

(ii) The precise definition of the physical limits to the shipowner's liability;

(iii) The fixing of maximum values for packages up to which shipowners should be liable to pay.

32. We make the Canadian water carriage of goods act, and not the Harter Act which it closely resembles, the basis of our recommendation, because it embodies the latest experience. It was passed in 1910, whereas the Australian sea carriage of goods act was passed in 1904 and the New Zealand shipping and seamen act, certain sections of which deal with shipowners' liability, was passed in 1903. The Harter Act was passed in 1893.

33. *Provision for exceptional risks.*—We attach great importance to the provisions (i), (ii), and (iii) of our recommendations above. In the first place we would make provision for exceptions in the case of special kinds of goods or methods of carriage. All the Dominion acts except live animals from their operation and the Canadian act excepts lumber and other "wood goods."

34. It is clearly requisite to provide for the exceptional treatment of new kinds of goods and methods of carriage so that traders and others wishing to initiate new developments may not be met by the impasse that the shipowner is unwilling to take the unknown risks and can not get rid of his liability in respect of them. It is thought that voyages to certain ports or places might also be, or become, subject to such extraordinary risks that they might properly be excluded from the operation of the proposed legislation.

35. We believe that such exceptional cases are likely to be very few, but we think it important that the new legislation should contain provisions for defining what articles, voyages, or methods of carriage ought to be excepted from its operation on the ground that the risks attached to the carriage or voyage are so new or uncertain that it is inexpedient that the act should apply; and further, that inasmuch as such risks will in most cases be likely to become ordinary risks as the trade in question develops, there should be power to remove such exceptions.

36. *Extent of physical limits within which liability should obtain.*—The governing terms of the existing Dominions' legislation on this subject are to the effect that the owner, manager, agent, master, or charterer of any ship must not be relieved from liability for loss or damage arising from negligence, fault or failure in the proper loading, stowage, custody, care, or delivery of goods

received by him to be carried in or by the ship, nor must the obligations of the master, officers, agents, or servants of any ship to handle and stow goods carefully, and to care for, preserve, and properly deliver them be lessened, weakened, or avoided.

37. Difficulty arises as to the determination of the point at which any damage or loss may have occurred, but we feel that so long as all reasonable precautions are taken to check the soundness and quantity of the goods when they are transferred from one responsible carrier to another this difficulty is not insuperable. For our present purpose it is only requisite to consider what protection the shipowner should be given in order that he may not have to accept liability for that which is not within his control as a shipowner. In this connection it should be kept clearly in mind that the form of the proposed legislation is not to create any liability, but to prohibit the practice of contracting out of an existing common law liability, and so far as we are aware the decisions at common law are not regarded as having been unfair to the shipowner.

38. In accordance with the modern methods of commerce there are frequent cases where the shipowner, especially the liner owner, performs services as forwarding agent or warehouseman before "loading" or after "delivery from the ship." We think that the new legislation should not affect such services which we understand are not covered by any of the existing Dominion acts.

39. The bill of lading purports to be a receipt for the goods to be carried, as well as the contract for their carriage. Since the normal bill of lading opens with the word "shipped," the liability begins with the "loading" and no question arises. In the case, however, of a "received for shipment" bill of lading or other equivalent document, the proposed uniform legislation should not affect services prior to "loading."

40. Similarly, in regard to the close of the voyage, services by the shipowner when acting as warehouseman or forwarding agent subsequent to "delivery from the ship" should also not be affected.

41. There are, no doubt, cases in which the master and officers are unable effectually to control actual discharge from the ship, but it would appear important in the general interests of commerce that any such undesirable conditions in foreign ports or elsewhere should be the subject of representation and other pressure upon the governments or authorities responsible. Only in very exceptional instances do we think that a justifiable case will arise in which permission should be granted to shipowners to curtail their liability and to limit the operation of the legislation so as to exclude delivery while not exempting the voyage itself.

42. The new legislation should, however, provide for the granting of the necessary permission in such exceptional cases.

43. *Maximum monetary limits to liability.*—Section 8 of the Canadian water carriage of goods act, 1910, states:

"The ship, the owner, charterer, master, or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than $100 per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertance or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master, or agent."

44. It is noticeable that the limit of $100 imposed by the act is low compared with the limit voluntarily imposed by the shipowners in other trades. The act, apparently leaves it open to the shipowner to charge a higher freight for packages of which the declared value is over $100.

45. Neither of the other similar Dominion acts nor the Harter Act contains any provision of this kind, and although the Harter Act purports to render it illegial for shipowners to contract out of their liability for loss of, or damage to, goods, nevertheless, the United States courts have held that it was competent for a carrier of goods to agree with the shipper upon the valuation of the property carried, so that the carrier assumes liability only to the extent of the agreed valuation. The view has been expressed to us that, in effect, shipowners could evade their liability under any of the existing legislation except, perhaps, the Canadian act, by "agreeing" an extremely low value for goods with the shipper.

46. It appears to us that it will be necessary in the new legislation:

(1) To provide for the settlement of a reasonable maximum "value" as the limit of liability, or, probably, several such limits for the various trades, and to provide in some way for changes to be made to accord with any altered conditions in the freights and values.

(2) To prevent evasion of the general liability by any system of low or nominal agreed values.

47. As regards (1), it would appear that in prewar times the maximum limits inserted in the bill of lading bore a rough relation to the average value of the goods carried in the trades concerned, and small complaint was made. Recent sudden changes in prices have rendered these customary limits inappropriate, and in some trades readjustments have been made. On the whole, we feel that probably the best way to deal with the matter would be to leave the shipowners to insert their own reasonable maxima in agreement with the shippers in each trade, but with permission for an appeal by any interested party to some independent authority in the event of the maximum not being thought reasonable. In the case of exceptionally valuable articles such as gold and precious stones, we think that a duty should be incumbent on the shipper of declaring the contents and value of the package at the time of shipment.

48. *Methods of dealing with exceptions and limits; proposed imperial body.*—It will be seen that for the smooth working of the proposed legislation we think that a certain elasticity will be necessary at three points:

(i) As to new and exceptional articles, voyages, and methods of carriage;

(ii) As to the curtailment of liability in exceptional circumstances;

(iii) As to the monetary limits of liability.

49. The statutory provision in regard to each of these three categories might be in such terms as to leave the application in particular cases to be decided by the ordinary courts of law. The courts would have to decide, for example, whether particular risks came by reason of their novelty witin the exceptions intended by the enactment, or whether a limit of liability was reasonable. This would be a feasible course, but, in our opinion, one attended with two grave defects.

50. In the first place, this method would not afford the elasticity which is particularly necessary in dealing with the details of commercial practice. The ordinary courts must, of course, remain the interpreters of the common law, whose operation on this subject would be restored by the new statute law, but we think that a specially constituted body, whose members should preserve close contact with commercial conditions, would be better adapted to make the kind of decision that is required.

51. In the second place, reference to the courts of law might not secure the imperial uniformity which appears to us to be so desirable. There would probably be conflicts of decision as between the courts in the different countries of the Empire, and, even if appeal to the privy council were practicable it would be a very expensive and prolonged process, quite unsuited to the special purpose in question.

52. Having regard to these arguments and to the great importance we attach to the preservation of uniformity throughout the Empire and to the elastic working of the legislation, we have considered the alternative of providing for the reference to a special body, common to the whole Empire, of the particular questions and appeals involved. This alternative is naturally suggested by the resolution of the imperial war conference of 1918 in favor of the appointment of an imperial investigation board.

53. We have given careful consideration to the methods by which the findings of such a board might be made effective. There are two main alternatives—either the decision should become operative immediately it has been duly promulgated by the board, having the effect, for example, of adding a new commodity to a schedule in the act of each part of the Empire, or the finding should be advisory and require to be adopted by the appropriate organ of the Government of each part of the Empire, as by order in council.

54. Obviously, the former method would have the great advantage of securing (*a*) immediate uniformity, (*b*) speed of decision, and (*c*) probably technical superiority, but we recognize that such a scheme raises constitutional questions which are beyond the scope of our terms of reference. This is a matter which we must, therefore, leave to higher authorities; but we think that the establishment of such a board is most desirable, even if it should be endowed only with advisory powers.

55. *Other functions of such an imperial body; further matters relating to bills of lading.*—It is clear that the functions of the proposed board could not well be confined to the specific task contemplated above, and we think it opportune to deal here briefly with two other matters which have come before us and led us on other grounds to contemplate the establishment of such a central body.

56. The first of these matters is the question of the use of the phrase "received for shipment" in bills of lading as an alternative to or in substitution

for the usual single word "shipped." This question was brought before the committee by the Rubber Growers' Association. As their complaint was against the practice in this matter of certain-named steamship companies in the Far Eastern trade, it was considered that the most appropriate course would be to endeavor to bring the parties together, with a view to their arriving at a mutually satisfactory solution. Accordingly, after correspondence with the shipping companies in question and the eastern exchange banks, a meeting was held on December 10, 1920, at which our chairman, Sir Halford Mackinder, presided, and the Rubber Growers' Association, the shipping companies, and the eastern exchange banks were severally represented. An account of the meeting, as agreed to by all concerned, is attached as Appendix III, from which it will be seen that the cause of difference was removed, at any rate for the time being, by an arrangement accepted by all parties.

57. We have quoted these proceedings because they illustrate the possibilities of conciliation by an imperial body which is in continuous touch with shipping conditions and is charged with the function of investigating complaints.

58. The other matter to which we have referred is of a more general character. There is in certain quarters a demand for a model or uniform bill of lading.

59. The evidence as yet taken by the committee on this subject has been generally to the effect that widespread uniformity was impossible, owing to the varying conditions of particular trades, but that a very considerable degree of uniformity might be secured in each homogeneous trade. Reference may be made in this connection to the practice which is understood to obtain in France of registering the forms of shipping documents with the chambers of commerce, which in that country have a more or less official character.

60. We think that the prevalence of the demand for uniformity is due to the fact that bills of lading have been varied by shipowners without adequate notice and consultation with shippers in the various parts of the Empire.

61. We hope that the general terms of the bills of lading will be increasingly settled by negotiations between associations or bodies representative of the general interests concerned, and the decision of the question of shipowners' liability should render this more feasible. An example of what can be accomplished on these lines is afforded by the work done within its own sphere by the documentary committee of the Chamber of Shipping of the United Kingdom. It is, however, the case that shipowners and shippers are frequently resident in different parts of the Empire, and we think it would be advisable that there should be an imperial body to which they may resort for purposes of conciliation.

62. The completion of the further work involved in our terms of reference will doubtless give us additional experience of great value in connection with the functions of such a central body as has been referred to, and we propose devoting very careful consideration to its constitution and to the question of the other functions which might with advantage be assigned to it.

63. It is obvious that it must be representative of the principal parts of the Empire and that it must include persons of expert knowledge. Provision may also have to be made for the holding of local inquiries by one or more of its members, perhaps with the assistance of local assessors.

64. We have felt, however, that the question of shipowners' liability under bills of lading is of such long standing, and gives rise in many quarters to so much feeling, that it was desirable to come to our conclusion in regard to it and to report them without delay.

65. We desire to add that before our colleague, Sir Kenneth Anderson, left for Australia he agreed to the recommendation in regard to shipowners' liability which is stated in paragraph 31, though the remainder of the report was not drafted in time for his signature.

66. Finally, we must thank our secretary, Mr. E. J. Elliot, and his assistant, Mr. R. D. Fennelly, for their unwearying and skillful assistance in the preparation of this report.

H. J. Mackinder, *Chairman.*
F. G. A. Butler.
W. S. Meyer.
H. Llewellyn Smith.
George H. Perley.
H. Larkin.
J. Allen.
Geo. Bowden.
Edgar R. Bowring.
Alfred Booth.
W. L. Hichens.
Kenneth Lee.
James W. Murray.
W. J. Noble.
E. J. Elliot, *Secretary.*

February 25, 1921.

[Appendix I.]

Summary of Evidence on the Limitation of Shipowners' Liability by Clauses in Bills of Lading.

I. SUMMARY OF EVIDENCE ON BEHALF OF SHIPPERS.

Carriers' risks and navigation risks.—It will be convenient at the outset to indicate the limits of the question as it comes before the committee. Risks to property carried at sea arise from two classes of causes: (*a*) Perils of the sea, giving rise to what may be called navigation risks, and (*b*) want of care in handling, stowing, or keeping of goods. (R., 339–344.[1]) It is the latter kind of risk that is chiefly in question. Further, overseas commerce involves transit over land to ship and from ship between the origin and final destination, and the shipowner now often performs shipping and forwarding agents' work. (A., 150.) It is only that part of the whole act of transportation which appertains to the ship that is contemplated in what follows except where otherwise specifically stated.

Responsibility and control.—Shippers and consignees contend that the natural and proper principle in this matter is that the shipowner and his servants are the only persons in a position to insure due care in the loading, custody, and unloading of the goods carried, and that in consequence the responsibility for such due care and the liability for any loss or damage occurring should fall upon the shipowner, who should not be allowed to contract himself out of his liability. (M., 1263, 1279.)

Existing position under English law.—By the common law of England the shipowner as a common carrier is absolutely responsible for the safe carriage and delivery of the goods he carries unless prevented by the act of God or the King's enemies. This is, of course, subject to such statutory limitations as are imposed by the merchant shipping acts. Until a comparatively recent date, about 1885, it appears that shipowners and shippers were in agreement that it was the responsibility of the former to carry and deliver safely the goods intrusted to them in respect of all causes of damage or loss which were or should be within their control, and that billls of lading, which were then largely drawn by agreement, did not contain the exemptions now complained of. (Memorandum put in by Liverpool Chamber of Commerce.) (M., 1165, 1166.)

It was and is, however, equally the position under British law that there is nothing to prevent a shipowner from exempting himself by special contract from liability for damage and loss of every kind and arising from every cause, and the shipowners began about 1885 to introduce into bills of lading exemption clauses of increasing comprehensiveness and stringency. (R., 233 et seq.) The reasons of this change are stated to have been the increasing combination among shipowners and the fact that the volume of the world's trade had, on the whole, overtaken and kept ahead of the amount of shipping accommodation available for it. (Memorandum put in by Liverpool Chamber of Commerce.) Thus the shipowners, it is held, were placed in a position of advantage. Agreed bills of lading have been altered by them, and, although the practice of agreement between the parties still obtains to a certain extent, e. g., the Indian bills of lading of 1919 (M., 1209), it does not give either immediately satisfactory or lasting results from the shippers' point of view. (M., 1164.) Shippers have in fact, it is contended, been faced by an interest possessing such a degree of monopoly that freedom of contract does not in reality exist. (R., 218.)

Pilferage.—In recent years the question of shipowners' liability has received additional importance from the great increase in pilferage which has occurred as an indirect effect of the war. It was stated that pilferage has increased 75 per cent[2] since the outbreak of the war, and has become an organized and

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[1] The references are to the numbers of the questions, and the following abbreviations are used to indicate the names of the witnesss: T.—Mr. E. B. Tredwen, London Chamber of Commerce. A.—Mr. J. W. Allen, J. P., Hull Chamber of Commerce. R.—Mr. J. P. Rudolf, Liverpool Chamber of Commerce, Liverpool and Glasgow Underwriters' Associations. N.—Sir Norman Hill, Bart., Liverpool Steamship Owners' Association. H.—Mr. L. C. Harris, Chamber of Shipping of the United Kingdom. Nich.—Mr. E. F. Nicholls, Institute of London Underwriters. B.—Mr. S. A. Boulton, Lloyds' Committee. C.—Mr. F. H. Carey, London Assurance Corporation. M.—Mr. J. S. McConechy, Manchester Association of Importers and Exporters. Ho.—Mr. R. D. Holt, J. P., Messrs. Alfred Holt & Co., Liverpool.

[2] This would appear to be a very moderate estimate. In the Times Trade Supplement of November 20, 1920, figures for the monetary value of claims for pilferage were given, showing a risk from 1 shilling 44 pence per ton in 1913 to 26 shillings 91 pence in June, 1920.

wholesale practice. It is prevalent throughout all the carrying trades, and admitted not to be so great on ship or by shipowners' servants as by stevedores, dockers, and others on shore. So serious did the losses become that in May, 1920, English underwriters agreed among themselves to pay not more than 75 per cent of claims. (T., 39, 40, 46.) One witness stated that one reason for increased pilferage was that prior to this step on the part of the underwriters neither the cargo owner nor the shipowner really cared about the safe carriage of the cargo. (M., 1271.)

Actual grievances.—Evidence as to the actual disabilities experienced by cargo owners has been carefully sought. It is generally admitted that claims against shipowners in respect of loss of or damage to goods carried at sea, if reasonable, are met to a very considerable extent by the shipowner, though he is not legally liable owing to the terms of his bill of lading. One witness on behalf of the chambers of commerce said he had had no just claims refused, and that in his opinion and experience the shipowner puts in these "clauses to protect himself from dishonest and unreasonable clients, but the reasonable, honest client is not prejudiced by them." (T., 33.)

Another witness, who spoke on behalf of both shippers and underwriters, though admitting that "there are a very large number of responsible and reputable shipowners who, when they are dealing with important and regular clients, undoubtedly admit the claim, if reasonable," stated that it is only with a minority of shippers that the shipowner will deal thus. (R., 224, 225.)

The witness who appeared on behalf of the Manchester Exporters and Importers' Association said that their experience is that once they go to the shipowners in a friendly manner they can always get a settlement but the objection is to being in the position of having to accept these settlements as acts of grace. (M., 1219.)

Certain specific cases in which shippers had to submit to apparently harsh conditions and others in which actual claims which seemed reasonable had been refused were adduced in evidence, and it was stated that some of these were typical of numerous others. (R., 203, 210.) (See also under the summary of evidence on behalf of the underwriters.)

Insurance.—It is the universal practice of shippers to cover themselves against loss of or damage to goods carried by sea by insurance. This is usually done under a "warehouse to warehouse" policy, which, as its name indicates, covers the whole transit and not merely that part of it effected by the ship. (T., 48.) The shipowner also covers with an underwriter or, more generally, with a mutual indemnity association any risks he may have, and it may happen that there is overlapping, or double insurance of the same risk, very often to the advantage of the underwriter, who receives a premium while the shipowner in practice takes the risk. (T., 78.)

Complexity of bill of lading.—One of the minor points made against the present system is the great and increasing complexity of the actual form of bill of lading consisting of a large number of clauses printed in very small type and difficult to interpret. (R., 218.) The evidence was against any attempt to introduce a uniform bill of lading for all trades, but that there should be common basic principles in the matter of liability. (R., 238, 314; M., 1177.)

Benefits under existing legislation restraining the freedom of shipowners to limit their liability.—One witness stated that he had experienced no advantage under any of the legislation of the Harter type. Complaints still arise from transactions under those acts, and the real meaning of the Australian sea carriage of goods act had never been tested, with the result that no one knew its real meaning and effect. (T., 26; T., 59–64; T., 123.)

Attention was also drawn to the finding in the report of June, 1920, of the London Chamber of Commerce Committee that "the experience of working under the Harter Act and the sea carriage of goods acts is that merchants are little better off" for these acts.

On the other hand, a practicing solicitor in Hull of considerable experience in such cases stated (in a written communication) that great improvement had followed the passing of the Harter Act. (Jackson: Appendix to Allen's evidence.) Other witnesses stated that the act had been the means of avoiding much litigation, and that there had been an absence of complaints. (M., 1230; R., 223.)

Agreed or limited values.—It was pointed out that a development had occurred which threatened to rob the Harter Act of much of its efficacy; this was the practice, which had been held to be legal under the terms of the act, of stipulating an agreed value which may be very much below the real value of the goods. (R., 292.) The chief actual complaint would appear to be to the effect that the

rise in the value of commodities and in the level of freights has not been followed by a commensurate rise in the agreed values put in the bills of lading by the shipowners. For example, the value of cotton was formerly stipulated at $100 a bale, a figure which has been raised to $150, but this is not regarded as a sufficient increase. (M., 1188–1190.)

Complaint is also made in respect of the limitation of values inserted in bills of lading other than those under the Harter Act. For example, in the Indian bill of lading the maximum up to which the shipowner will pay in cases of loss or damage in respect of which he is prepared to admit liability at all is fixed at £100 per package only. It is contended that this should be raised in the same ratio as prices and freights have increased.

In the case of the Australian and China lines an increase to £200 has in fact been made, but it is not regarded as sufficient.

It was stated that there should be no difficulty in the ascertainment of the real and just value and that this might be defined as the invoice value or the market value at the time of discharge. (M., 1200, 1201.) Sometimes where the consignment is to order there would be no invoice, and then the market value would have to be adopted, but the cargo owner contends that the shipowner should not have the option of choosing between the two values; the cargo owner desires to know his precise position. (M., 1231, 1232.)

Merchants object to ad valorem freights chiefly because they are often unreasonably high. (M., 1245, 1246.) The witnesses made it quite clear that they are prepared to pay an additional charge in respect of the excess value of goods over a fixed limit of value to be agreed on, such charge being in the nature of an insurance premium. (M., 1254–1248; R., 292.)

Having regard to the interpretations now placed on the Harter Act in this matter of agreed values and to the possibilities of evasion thereunder, the witnesses desire that in any legislation that may be introduced in the United Kingdom or other part of the British Empire care should be taken to provide against any such evasion. The limit up to which the shipowners should be liable without additional charge should remain, but it should be at a reasonable level and not subject to arbitrary variation by the shipowner.

General effect of transference of liability back to shipowner; (a) on freights.—In regard to the economic consequences of compelling the shipowner to accept the liability opinion differed. One witness considered that the shipowner should be able to insure more cheaply because he had control of the risk. (M., 1246); another contemplated a considerable increase in freight, and that in general the increase in freight would exceed the shippers' previous payments to underwriters. (T., 87.) Still another witness was of opinion that there would be no material increase in freights, but this opinion appears to have been based mainly on the feeling that in the past there had been no reduction in freight when the shipowner had obtained relief from liability by new clauses in his bill of lading. (R., 263–267.)

(*b*) *On care exercised by shipowners.*—The fundamental question, however, is whether a real economic saving would be effected owing to greater care on the part of the shipowner and his servants and not merely a fresh allocation of burdens.

It is admitted that shipowners are already going to very considerable trouble and expense in the endeavor to combat pilferage and that it is their practice to bear at any rate a large proportion of the losses from this and other causes; but witnesses thought they would probably be still more careful if the responsibility were fixed upon them. Instances were given where the present conditions were considered to be actually conductive to fraud. There is, for example, a short delivery clause which provides that a signed statement by a ship's officer shall be evidence of short delivery and evidence also that the short delivery arose from an excepted peril, though the statement need not specify the nature of the peril. (R., 244.) Shipowners may no doubt be expected to insure against these risks if placed upon them in their mutual associations, and it might be argued, therefore, that they would not, in fact, be more careful than at present. As against this, however, it was urged that the colleagues of a shipowner in such associations would soon become critical if his claims became excessive. (R., 262.)

Practical difficulties of allocating responsibility for loss.—Considerable attention was given to the practical difficulty of determining where loss of, or damage to, goods, especially through pilferage, actually took place. The goods in passing from warehouse to warehouse via road, railway, dock, and ship are are necessarily in the possession and care of several different interest, and in determining the liability for pilferage it is necessary to make reasonably sure

of the stage in the whole process of transportation at which the loss took place. The witness for the cargo owners who was chiefly examined on this subject was of opinion that the last party in the chain of transport should be responsible for delivery of the goods in good order and condition to their final destination, and that each earlier party should obtain a clean receipt from the succeeding party. (M., 1284–1298, 1305–1306, 1309, 1317–1319.) Before such receipt was given all practicable precautions would naturally be taken to make sure that the goods are in good order and condition. It was admitted that the conditions under which the loading and unloading of ships proceed are to-day such as to render it impossible to examine thoroughly the goods on receipt either by the ship or by dock authorities or railway companies. In these circumstances the transport authorities can only take what precautions are practicable.

The intention would be that claims for loss would in the first instance be against the last party delivering the goods, and there would be no presumption that the loss had occurred while the goods were on the ship or in the custody of the shipowner.

Need for legislation rather than mutual agreement.—It is not denied that associations of merchants afford valuable means whereby their points of view may be brought effectively to the notice of shipowners and attention was directed to the opinion expressed in the report of the London Chamber of Commerce committee that a strong merchants' committee in each trade is the best means for getting a redress of grievances. (T., 13.) It was held, however, by one witness that while procedure by bargaining between shippers' and shipowners' associations easily met the case of bulk cargo shipments, it was not adequate for miscellaneous liner cargo. (R., 321.) He said that attempts had been made to agree bills of lading, but such agreed bills had not stood very long before alterations and new clauses had been introduced by the shipowner. (R., 346.) The same had been the experience on the Continent, though in the case of France standard bills of lading were filed with the chambers of commerce and so obtained an official character. (R., 350.)

There is no doubt that the merchant community in this country generally regards legislation as essential to secure that the shipowner undertakes liability as desired. (M., 1183, 1239.) The witness from the Manchester Association thought that legislation would be necessary, but he also thought (*a*) that it ought to be possible to fix bills of lading by agreement between representative bodies of shippers and shipowners (M., 1233–1236), and (*b*) that shippers would accept some such system provided that the agreed bills of lading should be registered with some official or semiofficial body, and not be alterable arbitrarily or without due notice. (M., 1206–1211.)

II. SUMMARY OF EVIDENCE ON BEHALF OF THE SHIPOWNERS.

Freedom of contract.—The shipowner puts at the outset the desirability of freedom of contract, contending that the interests of all parties are thereby best secured. (N., 363–364, 418–422.) It was argued that a monopoly or quasi monopoly did not exist in the case of shipping as shipowners could not prevent freights falling; it was admitted that a nearer approach to such a state of affairs obtained in the Australian trade than in other trades, but this was attributed to the fact that the restrictive legislation of the Commonwealth had had the effect of keeping tramp shipping away from the trade. There is nothing to prevent outside shipowners from competing by offering better conditions to shippers (N., 414), and there is no dictation, e. g., from the London and Liverpool Protective Association as to the conditions which steamship owners may put into their bills of lading except that there must be a clause exempting them from liability for loss due to negligent navigation. (N., 385, 391.)

The compelling power on the shipowner to make him give reasonable conditions in regard to the carriage of goods is the necessity of maintaining the reputation of his line and of giving satisfaction to his customer. The reputable and far owner gets much better support. One witness stated that the shipowner who is careful to avoid loss and damage to his cargo has the advantage that more favorable rates of insurance are quoted by the underwriter to the shipper on goods shipped in his steamers than on those shipped by competitive steamers whose owners do not enjoy so good a reputation in this respect. (N., 380, 284; Ho., 1404, 1411.)

Though the shipowners would appear to take no exception to the account of the development of the present situation put forward on behalf of the shippers it is claimed as an example of the good arrangements obtained under a free

régime that the Harter Act was based on a form of bill of lading negotiated some 10 years previously by the Liverpool Steamship Owners' Association with the New York Produce Exchange. (N., 385; H., 584.)

The explanation given of the undoubted change in the nature of the bill of lading is that the complexity of ocean trade has increased enormously, and that to protect himself against unfair claims on the part of unreasonable shippers or consignees or ingenious underwriters the shipowner has been obliged to insert numerous clauses in the bill of lading. (Harris; Memo.)

Actual position of shipper in practice.—The shipowner contends that steamship Lines very generally recognize pilferage claims; though it was admitted by Sir N. Hill that "sometimes questions arise as to stowage." It was admitted that there might be a tendency to treat the small trader unfairly, but on the other hand, it was strongly contended that the modern development of liner services had conferred essential advantages on the small shipper. (N., 434–435, 445–446, 549; H., 580, 609.) Mr. Holt, who took up the position that practically every loss was due to negligence, said that though he would not necessarily pay a claim if he was satisfied that the loss was due to negligence, he recognized that there were cases in which the shipowner ought to pay; the general motive in paying claims outside the legal liability would appear to be a desire to preserve an atmosphere of good will. (Ho., 1388, 1394.)

Complexity.—As regards the complaint against the modern bill of lading on the score of its complexity it was stated that the underwriter does not really want to know the terms of the bill; what he does want to know is the name of the line which issues the bill (H., 571–574); it is upon the reputation of this line that he bases his rate of premium (see above under "Freedom of contract"). It is stated that the claims clerks of the underwriters should be perfectly familiar with the terms of bills of lading as they naturally have to examine them carefully when claims from their clients are received. (N., 400.)

Uniform bills of lading would be quite impracticable. (H. Memo.) It was urged that it must be within the power of the shipowner to vary the clauses of his bill readily; elasticity is essential, and the settlement of clauses by agreement (even among shipowners themselves) was not regarded, by one witness at any rate, as feasible. (H., 634–636.) The bills in use do, however, agree on fundamentals. (H., 646–648.)

Existing legislation.—Sir Norman Hill gave evidence as to one important difference between the provisions of the Harter Act, 1893, and the Australian sea carriage of goods act, 1904. The former provides that if the shipowner "shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied," then he is absolved from responsibility for damage or loss resulting from faults or errors in navigation, from dangers of the sea and from other definite causes generally beyond his control. The Australian act provides, on the other hand, that in every bill of lading a warranty shall be implied that the ship shall be at the beginning of the voyage seaworthy in all respects and properly manned, equipped, and supplied, and it is not enough for the shipowner to exercise due diligence to secure exemption from liability for loss and damage arising from causes of the same kind as those referred to above. (N., 471–473.)

This distinction, thought theoretically important, does not appear to have had much practical effect. The Australian act is not clearly consistent with itself and the exact legal position has never been tested. It was stated that shipowners had not yet accepted the Austrian sea carriage of goods act as constitutional. (Ho., 1330, 1385.)

Moreover, the particular difference here in question is not directly concerned with risks of damage and loss due to careless handling, stowage, and custody, though it might have the effect of bringing within the responsibility of the shipowner some risks whch, on practcal and fair grounds, ought to be excluded.

It was stated that the passing of the Harter Act had not made any practical difference to shipowners, and probably not a single policy of insurance had been dropped because of it, nor had any reduction of premiums occurred. It was doubted by one witness whether his firm had paid, under the Harter Act or the Australian act, any claim which they would not have paid but for those acts. (N., 410, 469, 555; H., 582; Ho., 1381, 1388.)

The Australian act was strongly condemned in respect of the features explained above, and was stated to have had the effect, coupled with other legislation, of putting up freights to and from Australia. (N., 470, 472, 477; Ho., 1331.) At the same time it was admitted that the terms of the act had been

adopted in the outward bill of lading from the United Kingdom to Australia by most lines without an increase in freight. (Ho., 1387, 1434.)

The Canadian legislation on the same subject was subjected to similar strictures, but the terms of the 1910 act appear to be much more close to those of the Harter Act than to those of the Australian act. (N., 481, 523–524.)

Shipowners' difficulties.—The clause in the home bill of lading, which protects the shipowner against pilferage claims, was put in largely because it is so difficult to prove or ascertain where the loss takes place, and it would manifestly be unfair to saddle the ship with the responsibility for losses which take place before the goods reach the ship, or subsequently to their delivery over the ship's side. (N., 417, 437–439.) Sir Norman Hill did not think there would be any objection to a provision to the effect that if it can be established that the pilferage took place, owing to the negligence of the shipping company's servants, the company should be liable. (N., 440.) But the biggest difficulties are those attending delivery. Most of the additions to the modern bill of lading consists of provisions relating to what happens at the end of the voyage. (N., 558–562; H., 650.) The shipowner wishes to end his responsibility for the goods at the ship's rail, or as soon as the goods leave the ship's tackle. There are, however, foreign ports, where the shipowner is in practice, unable properly to control even the actual discharge of the cargo. (H., 577.) Particular examples of fraudulent dealing and conspiracy at far eastern ports, against which the shipowner may have to seek protection, were given. (Ho., 1458.)

It had to be borne in mind, too, that shipowners in certain cases were also warehouse keepers, and that if they were no longer free in regard to their liability care would have to be taken to distinguish their liability as shipowner from that as warehouse keeper. (Ho., 1351.)

Agreed or limited values.—Interesting evidence was given by Mr. Holt in regard to the problem of the maximum limit of value to be attached to goods in respect of liability. His object was to get the shippers to declare the value of their goods at shipment when above a certain prescribed limit, so as to secure that these valuable goods should be specially stowed and watched; and he contended that if the shipper did not so declare valuable goods he was facilitating pilferage or theft and so should have no remedy against the shipowner. If, however, the value of the goods was duly declared, the shipowner would accept liability (where not otherwise excluded) up to a maximum in this particular case of £200, and on payment by the shipper of an extra sum of 5s. per ton, up to £400, as the shipowner would take the special care indicated and so help to reduce pilferage to a minimum. (Ho., 1346–1349, 1441, 1442, 1451.)

Effect of proposed change in incidence of liability; (a) on insurance practice.—The witnesses appearing on behalf of the shipowners were of opinion that the cost of insurance of the risks in question with the shipowner would in all probability be greater than the present cost of insurance with the underwriter. (N., 456–459.) Moreover, the proposed legislation would give the cargo owner merely a claim against the shipowner, and such a claim would not give the same security as the present policy of insurance; the value of a cargo to-day is very many times the value of the ship. (N., 468, Sir N. Hill's Memo. secs. 3–5; Ho., 1401.) The shipowner would insure by means of mutual clubs. (N., 461.)

It was held that the banks would probably demand adequate insurance against failure of shipowners to pay claims if the shippers were to get legislation requiring the shipowner to guarantee safe delivery. (Sir N. Hill's Memo. secs. 15, 16; Ho., 1400.) As mentioned above, the Harter Act had not, in fact, enabled cargo owners to drop insurance.

The opinion was expressed that the businesses of "carrying" and of "insurance" should be kept distinct. The big shipping companies could do the latter as well, but the smaller ones would suffer.

(*b*) *Foreign competition.*—In this connection considerations of foreign competition are important. If two countries, the one (A) having the liability fixed on the shipowner and the other (B) leaving him free, are competing in the export of goods to a third country, the shipowner in (B), ceteris paribus, may be able to quote a lower freight than his competitor in (A), and one witness on behalf of the shippers agreed that the lower freight would outweigh with the importer the better conditions of the bill of lading. (T., 90, 99.) Another such witness contended that the fairer bill of lading would get the business. Evidently the comparison is very hypothetical. Undoubtedly the shippers may be taken as desiring that the effect of foreign competition should be fully considered before legislation is undertaken.

(c) *On care of cargo.*—It was not admitted, at any rate in the case of the lines, that the fixing of the liability on the shipowner would insure greater care. (N., 382–384; Ho., 1404.) It was pointed out that the real force actuating the shipowner was his need to give satisfaction in his services, and that, in fact, he does pay a majority of the claims. (See above under "Freedom of contract.")

Legislation or agreement.—Apart from the intrinsic merits or demerits of the measures suggested, the shipowners' representatives were much opposed to the idea of achieving those measures by legislation. On the other hand, shipowners would always be ready to meet and discuss matters with the shippers; "the difficulty is to get really representative people who will speak for the shippers"; but shipowners should not be the only parties who can combine. (Mr. Harris's Memo., p. 5; H., 600–604; N., 424, 539–547.) The method of negotiation has been successfully employed in settling charter parties; its application to the business of general shipments appears inherently more difficult, and the casual shipper who wants the lower freight offered by owners outside the conference is blamed as the cause of departures from agreed or quasi-standard forms of bills of lading. (H., 653–656.) Mr. Harris was inclined to represent the shipowners as better able to settle bills of lading to everybody's advantage by reason of their extensive knowledge of the difficulties involved. (H., 627–630.) Mr. Holt said that he had had no difference with any important merchant as to the terms of the bills of lading (Ho., 1320), and that those who contribute the bulk of the cargo are quite as powerful as he was as shipowner, and a combination of two or three of them could obtain very favorable terms. (Ho., 1367.) At the same time he admitted that he never discussed a new clause with the merchants and that it was fair to say that the bulk of such clauses were inserted without notice. (Ho., 1445–1446.)

Sir Norman Hill said frankly that he thought the shipowners should be relieved from being judges in their own cause, i. e., in relation to pilferage claims, and, as already mentioned, he did not see any objection to the shipowner being made liable for his servant's negligence in that connection. (N., 442–448.) He agreed that this might do good and would probably do no harm. His personal opinion in regard to legislation in this country on the lines of the Harter Act was that "it would be of some advantage to cargo owners," subject to provision being made for owner's risk rates of freight; and that "it would not do very much harm to reasonable shipowners." The consequences would not be considerable either way. (N., 566–8.)

Sir N. Hill attached much importance to the provision of owner's risk rates to cover the case of new and unknown risks. (Sir N. Hill's Memorandum, s. 21.) He has pointed out that the cargo owner had reasonably been required to take the risk of the carriage of refrigerated produce in the early stages of that traffic. Such developments in the future might be checked if hard and fast obligations were put on the shipowners, though eventually the risks involved would become no more difficult to deal with than those of ordinary sea carriage. (Addendum to N., 566.)

III. SUMMARY OF EVIDENCE ON BEHALF OF THE UNDERWRITERS.

Responsibility and control.—That the power of control should carry with it responsibility for loss in order to secure the minimum of loss is the essential principle involved according to the underwriter. The loss through short delivery, theft, and pilferage is very heavy; rates of premium are as much as 2 and 3 per cent; and in regard to certain articles, such as boots and shoes, the risk is certainly not less than 10 per cent. (R., 243; Nich., 670–680; C., 1129); and there has to be added to that the cost of litigation and the hostility engendered between the interests concerned. (B., 854, 872.)

It is contended that the proposed change in the incidence of the liability would be the means of effecting a considerable improvement. (Nich. Memorandum, s. 6.) It was advanced by one witness that the bill of lading conditions of to-day aggravated the evil of pilferage. (B., 870.) Another witness held that the clause repudiating liability for pilferage was not of recent insertion, but that it had become more common for shipowners to take strict advantage of it. (C., 1109, 1110.) It was stated that the clause, which has been mentioned before as much objected to by shippers, to the effect that a sworn statement by a shipowner's servant shall be conclusive evidence that the goods have been stolen or pilfered, had been adopted by the shipowners as a consequence of the heaviness of pilferage claims against them. (B., 860–864.) It was asked whether any legal proceedings had been taken to see whether judges would hold this clause to be reasonable, but apparently this has not been done. (B., 865–866.)

It was stated that increased competition among shipowners for freight would improve the situation; but at the same time it was maintained that to a very substantial degree the lines held a monopoly. (Nich., 709; B., 872–875, 930–931.)

It is admitted that good shipowners do at present pay claims, but there are vast differences, and although it was not denied that the shipowner has his reputation to maintain, it was stated that it takes a long time for comparisons to emerge, and that in regard to marine insurance, in particular, results are slow to show themselves. (Nich., 782–783, 802.)

Marine risks.—The underwriters made it quite clear that they did not wish for any greater stringency upon the shipowner in respect of navigation or marine risks, which could easily be kept separate from the risks of handling and custody of goods. (Nich. Memorandum, §5.) Indeed, one of the witnesses specifically states that legislation is required in this country to relieve the shipowner from the absolute warranty of seaworthiness implied by common law, but to impose the obligation to use due diligence by himself and his agents to make and keep the ship seaworthy. At present the shipowner can in this country contract himself out of the necessity for the warranty, and also out of that for exercising due diligence. Only under Australian legislation is there a statutory requirement of a warranty of seaworthiness.

Pilferage.—It emerges from the underwriters', as from the shippers', evidence that the main trouble at present is pilferage and the difficulty of determining where in the whole chain of transport that pilferage takes place. (C., 1111–1126.) Pilferage and theft, also bad stowage, misdelivery and nondelivery, are not risks covered by the ordinary policy of insurance taken out by shippers, but are usually insured under a separate policy. (B., 893, 915.) One witness went so far as to say that the shipowner should not be liable for theft (implying violence) and pilferage unless they resulted from lack of due diligence on his part; but that nondelivery and short delivery are shipowners' risks and should not be deemed to be due to theft or pilferage without due proof. (Nich., 694, 818.)

English underwriters in recently agreeing to pay up to 75 per cent only of the claims made under pilferage policies are thereby endeavoring to induce the shipper to take greater care in packing. (Nich., 799) In France it was stated the underwriter stipulates that he will only take 90 per cent of the theft and pilferage risk, and apparently the shipowner has to take the remaining 10 per cent. (Nich., 810.)

The underwriter recognizes the difficulty of determining the point at which pilferage (or other loss or damage) has taken place, and he asks only that the shipowner should be responsible for the goods while actually in his possession. (C., 1111–1126; Nich., 687–694.) It is admitted that the proportion of pilferage on land must be much greater than during carriage at sea, but typical examples of short delivery were cited, in which there must to all appearances have been connivance by the personnel of the ship. (Nich., 675, 742–743, 766–767; C., 1041, 1083.) The question where the loss occurred in each case would have to be determined by the available circumstantial evidence. (C., 1133.)

With regard to representations to the effect that the ship's officers have in practice very little power to control stowage and discharge in certain foreign ports, and also that certain port authorities, e. g., the Manchester Ship Canal Co., require the control of the ship to be given up to them while in dock, at the ship's risk, it was admitted that it would be unreasonable to fix upon the shipowner responsibility for what is not under his control. It was a limited class of case. (Nich., 788–793.)

Actual grievances.—The committee have naturally sought to obtain particulars of concrete instances in which the present practice has led to undoubted hardship, but the volume of such cases which the witnesses have been able to adduce is not large. Mr. Carey, claims adjuster, gave particulars of three cases in which the shipowner repudiated liability on the strength of the bill of lading clauses, though he would appear to have been equitably responsible:

(*a*) A case of wrong delivery due solely to the shipowner's servant's error, in which the shipowner offered only the limited value. (C., 1033.)

(*b*) A case of nondelivery on a voyage from Liverpool to Genoa, in which the shipowner refused to accept liability or to pay any compensation on the strength of a clause exempting him from liability for any loss capable of being covered by insurance. (C., 1041.)

(*c*) Another case of nondelivery on a voyage from Liverpool to Naples involving £1,000, in which the shipowner contended that the loss was due to theft, and so a matter for the underwriter. (C., 1083.)

While admitting that many claims are paid by shipowners, though excluded by clauses, underwriters state that an important body of shipowners do not reasonably meet claims, and that they none the less do not charge any lower freights. (B., 897–902.)

The claims refused by shipowners are generally in respect of nondelivery and pilferage. (C., 1093.) The shipper may be in the undesirable position that he is unable to pursue his claim against the shipowner, who has contracted himself out, or against the underwriter, who is not willing to insure every risk. An appreciable liability remains for the shipper; it is made up, it would appear, of 25 per cent of the pilferage risk, of inherent vice of goods, and of certain other definite risks and of any unknown ones. But the underwriter, like the shipowner, may pay where he is not strictly liable. (B., 942–947, 958–961; C., 1055–1061.)

One of the complaints of the shipper is that under present bills of lading he is not given a reasonable time within which to make his claim.

The underwriters affirm that it is quite impracticable for them to acquaint themselves with the terms of the bills of lading against which they are issuing policies (Nich., 784); in making the usual contracts for long periods there is nothing to protect them against changes in the clauses. (Nich., 698–700.) As underwriters in practice are unable to scrutinize bills of lading, their liabilities are unknown, and there must therefore be a tendency to charge a premium to cover the most extensive liabilities; in other words, to double insurance. (R., 219, 325; B., 887–890; C., 1051.)

Sometimes notice is given of change in bills of lading, but the rule is not to give notice, and that is a cause of dissatisfaction. (Nich., 815–816; B., 896.) Uniform bills of lading would not be practicable, but they should have in common certain fundamental characteristics fixed by agreement or legislation. (Nich., 707.)

Benefits under existing legislation.—Evidence as to shipments from the United States to South Africa and from the United States to the United Kingdom appears to establish the fact that the conditions in South African harbors are very much better than in those of the United Kingdom, since the former traffic is not nearly so badly affected by short delivery, theft, and pilferage. (Nich., 728, 745–748.)

Evidence given by Mr. Carey, an adjuster of claims, tended to show that the clause paramount applying the Harter act conditions was ignored by shipowners in South Africa, and that this was because shippers and underwriters have for reasons of cost, not as yet contested the matter in the union courts. However, the majority of shipowners trading from the United States to South Africa did not seek to repudiate liability, and the proportion of losses on those lines was very much less than on certain British lines in the same trade who ignored the Harter Act and added to their bills of lading a clause repudiating liability for pilferage. (C., 1004–1029.) Other examples of the indirect effect of the Harter Act were given, and it was advanced that the small proportion of claims for pilferage on imports into Canada from this country was an effect of the general care exercised by shipowners in the Canadian-United Kingdom trade in consequence of the Canadian legislation on the subject. (C., 1100.)

It was confirmed that the position under the Australian act remained uncertain.

Value difficulty.—It was agreed that the shipowner should be allowed to limit his liability as to value, and that he should in the case of the more valuable goods make in addition to his charge for carriage a charge in the nature of insurance. (Nich., 681, 758–760.)

Effect of proposed legislation.—It was admitted that the present practice, by throwing all the risks on the shipper, and through him on the underwriter, made for simplicity. It was also admitted that if the shipowner had to take the latter risks the shipper would only get a claim instead of an indemnity, and, further, that it was possible that the underwriter could insure with a narrower margin than the shipowner, though it was thought that competition between shipowners would bring the premiums down to the proper economic level. The main contention of the underwriter seemed to be that the shipper would still insure, at least for some years to come, with the underwriter, but that, owing to the increased care taken by the shipowner, the rates of premiums would fall. (Nich., 711–712, 768–777, 820–823.)

As regards competition with other countries, the determining factor would be freight and not conditions. (Nich., 719.)

Legislation or agreement.—The underwriters held that the present questions could best be dealt with by agreement between liner conferences and merchant associations, though it was admitted that it was more difficult for the latter than for the former to get together. (B., 876–880; Nich., 703.) Earlier attempts had failed by reason of the fact that shipowners amended agreed bills of lading.

One witness was strongly of opinion that it would be better to secure greater elasticity by giving the board of trade power to approve clauses or bills of lading which were in conformity with general principles laid down by law. (B., 883–885, 914, 936–940, and subsequent letter of Nov. 11, 1920.)

[Appendix II.]

Memorandum on the Existing Legislation in the Dominions on the Subject of Shipowners' Liability.

The latest Dominions legislation against the limitation of shipbuilders' liability by clauses in bills of lading is the water carriage of goods act, 1910, of Canada, and it is proposed below to state its chief provisions and, by comparison with them, those of the corresponding acts in Australia and New Zealand, and of the United States Harter Act, 1893.

(A) 1. The main operative provision of the Canadian act is section 4, which is as follows:

"Where any bill of lading or similar document of title to goods contains any clause, covenant, or agreement whereby—

"(*a*) The owner, charterer, master, or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or delivery of goods received by them or any of them to be carried in or by the ship; or

"(*b*) Any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation, are in anywise lessened, weakened, or avoided; or

"(*c*) the obligations of the master, officers, agents, or servants of any ship to carefuly handle and stow goods and to care for, preserve, and properly deliver them are in anywise lessened, weakened, or avoided;

such clause, covenant, or agreement shall be illegal, null, and void and of no effect unless such clause, covenant, or agreement is in accordance with the other provisions of this act."

2. It will be seen that this section deals with two matters, viz, (1) liability for loss or damage to goods in the course of their loading, stowage, care, and delivery [subsection (*a*)], with which may be associated [subsection (*c*)] the obligations of the master, officers, agents, and servants of the ship to exercise care in the handling, stowing, custody, and delivery of the goods; and (2) the obligations of the owner or charterer of the ship "to exercise due diligence" in the manning, equipment, condition, and seaworthiness of the ship [subsection (*b*)].

3. To the above section corresponds section 5 of the sea carriage of goods act, 1904, of Australia. The two sections are to a large extent identical in terms, the chief differences being (i) that in subsection (*a*) of the Australian act there is included among the sources of loss or damage "harmful or improper condition of the ship's hold or any other part of the ship in which goods are carried." At the same time it should be pointed out that in both acts there is in subsection (*b*) a preservation of the obligations in respect of making and keeping "the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation." (As to the exact effect of this in the Australian act see (ii) below.)

(ii) In subsection (*b*) in section 5 of the Australian act dealing with what we may refer to as "seaworthiness," there is a difference in wording which, though slight in itself, might, it seems, have important effects; instead of reading, as in the Canadian act, "obligations * * * to exercise due diligence to properly man, etc., etc.," it runs "obligations * * * to exercise due diligence and to properly man, etc., etc.," so that the Australian enactment would appear to effect the preservation of a general obligation to exercise due diligence

and of a specific obligation to properly man the ship, to make and keep the ship seaworthy and to carry out the other duties enumerated. The Canadian act seeks to impose only the exercise of due diligence in respect of the specifically enumerated duties. The whole bearing of the Australian act on the question of seaworthiness will have to be considered further, however, in connection with section 8 of that act, corresponding to sections 6 and 7 of the Canadian act, as to which see below.

The Harter Act, section 2, resembles the Australian act in that its words are "to exercise due diligence, properly equip, etc.," but this may have been inadvertent, as the wording of section 3 is "to exercise due diligence to make the said vessel, etc., etc."

4. Section 300 (1) of the New Zealand shipping and seamen act, 1903, corresponds to the sections dealt with above; the chief differences between its provisions and those of the Canadian act are:

(i) The inclusion in paragraph (*a*) of the "harmful or improper condition of the ship's hold" among the sources of loss or damage in respect of which the shipowners' liability is to be preserved.

(ii) On the other hand, in paragraph (*b*) there is no specific reference to "refrigerating and cool chambers"; the obligation is only, in this respect, to exercise due diligence to make the hold of the ship fit and safe for the reception of cargo; its carriage and preservation not being included.

(iii) Similarly, the obligation in respect of seaworthiness proper is to make the ship seaworthy and not, as in the acts dealt with above, to make and keep her seaworthy, but there are the additional words after "seaworthy" and capable of performing her intended voyage"; in the New Zealand act there would thus appear to be no continuing obligation in this respect.

(iv) A very important difference in the New Zealand provision is the qualification to the effect that clauses shall be null and void "unless the court before which any question relating thereto is tried shall adjudge the same to be just and reasonable."

5. The Harter Act agrees with the New Zealand act in regard to point (iii) above, and moreover it does not contain any reference to an obligation to make or keep the ship's hold or refrigerating chambers or other parts of the ship fit and safe. As we have already seen at 3 (ii) above, it differs from the Canadian act also in regard to form of the obligations as to seaworthiness.

6. On the whole, there would appear to be no feature of vital importance which this main provision of the Canadian act lacks and which the other acts contain.

(B) 1. Section 4 of the Canadian act, as we have seen, deals with the liability and obligations of the shipowner, master, servants, and agents in respect of cargo and of "seaworthiness," and in respect of the latter the obligations are confined to the exercise of due diligence in regard to certain specifically enumerated matters.

Section 6 removes from the shipowner liability in respect of loss or damage resulting from:

(*a*) Faults or errors in navigation;

(*b*) Faults or errors in the management of the ship:

(*c*) Latent defect.

provided due diligence in certain respects has been exercised.

Its precise terms are as follows:

"If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped, and supplied, neither the ship nor the owner, agent, or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or the management of the ship, or from latent defect."

2. In the Australian act there is no specific provision for exemption from liability in respect of faults or errors in the management of the ship or of latent defect. The provision in respect of "faults or errors in navigation" is contained in section 8, which is as follows:

"8. (1) In every bill of lading with respect to goods a warrant shall be implied that the ship shall be, at the beginning of the voyage, seaworthy in all respects and properly manned, equipped, and supplied.

"(2) In every bill of lading with respect to goods, unless the contrary intention appears, a clause shall be implied whereby, if the ship is at the beginning of the voyage seaworthy in all respects and properly manned, equipped, and supplied,

neither the ship nor her owner, master, agent, or charterer shall be responsible for damage to or loss of the goods resulting from—

"(*a*) Faults or errors in navigation; or"

(and there follow other items (*b*)—(*i*), as to which see (C) below).

3. It would thus appear that under the Australian act the shipowner gets a relief in respect only of what may be taken to be the main category of the three enumerated in the Canadian act, and then only provided the ship is actually at the beginning of the voyage "seaworthy in all respect and properly manned, equipped, and supplied," irrespective, for example, of latent defect.

4. It has further to be remarked, however, (1) that, on the one hand, the force of the words "unless the contrary intention appears" would appear to be to leave it free to the parties to agree that the shipowner shall be responsible for the classes of loss in question, and (2) that, on the other hand, this is a minimum measure of protection for the shipowner and that there is nothing to prevent him contracting out of liability for faults or errors in management or for latent defect so long as the bill of lading contains nothing contrary to section 5 or section 8 (1).

5. The New Zealand law on this matter is contained in section 293 of the shipping and seamen act, 1908. It is in practically the same terms as the Canadian section (6), except that it does not refer to "latent defect."

6. Section 3 (first part) of the United States Harter Act is the same as section 6 of the Canadian act, except that it does not refer to "latent defect."

(C) 1. In addition to the provision of section 6 of the Canadian act for a conditional exemption from liability in respect of faults or errors in navigation or in the management of the ship or from latent defect, there is by section 7 unconditional exemption in respect of a number of causes of loss such as fire, acts of God, deviation. The section is as follows:

"The ship, the owner, charterer, agent, or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God or public enemies, or inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent, or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service, or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity, or without the fault or neglect of their agents, servants, or employees."

2. Section 8 (2) of the Australian act contains, in addition to faults or errors in navigation, a similar list, viz:

(*b*) Perils of the sea or navigable waters; or

(*c*) Acts of God or the King's enemies; or

(*d*) The inherent defect, quality, or vice of the goods; or

(*e*) The insufficiency of packing of the goods; or

(*f*) The seizure of the goods under legal process; or

(*g*) Any act of omission of the shipper or owners of the goods, his agent, or representative; or

(*h*) Saving or attempting to save life or property at sea; or

(*i*) Any deviation in saving or attempting to save life or property at sea.

The exemption hereby granted of the shipowner from liability in respect of damage to or loss of goods resulting from these causes is conditioned by the ship being "seaworthy" at the beginning of the voyage; but as indicated at section (B) 4 above, the exact force of section 8 is far from clear. It may, for example, be open to the shipowner to contract out of his liability for fire, strikes, or other similar causes not embraced in the list, provided always the provisions of the rest of the act are not infringed.

3. In both the New Zealand act (latter part of section 293) and the Harter Act the list of exemptions does not contain fires, strikes, "reasonable deviation," or the final general phrase of the Canadian section, "or for loss arising without their actual privity or without the fault or neglect of their agents, servants, or employees." Moreover, the exemptions are conditional upon the exercise of due diligence to make the vessel seaworthy.

4. In this connection it is pertinent to note the terms of section 502 of the merchant shipping act, 1894, as to the exemption of the shipowner from liability in respect of fire, the relevant portion of the section is as follows:

502. The owner of a British seagoing ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases, namely:

(1) Where any goods, merchandise, or other things whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship.

5. The points of importance to note here are the comprehensiveness of the list of exemptions or, as they are often called, "excepted perils" in the Canadian act and their being unconditioned, also the apparent complexity of the Australian section.

(D) 1. The Canadian act alone of the legislation we are here concerned with contains any definite provision limiting the amount of the liability in connection with goods. This provision in section 8, which is:

"The ship, the owner, charterer, master, or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than $100 per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master, or agent."

In this connection reference should be made to the general overriding limitations of aggregate liability and to the special provisions in regard to valuables contained in section 502 (ii), 503 (i) of the merchant shipping act, which are as follows:

502. The owner of a British seagoing ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases, namely:

(ii) Where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

503. The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place, without their actual fault or privity (that is to say):

(*a*) Where any loss of life or personal injury is caused to any person being carried in the ship;

(*b*) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;

(*c*) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;

(*d*) Where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel by reason of the improper navigation of the ship;

be liable to damages beyond the following amounts (that is to say):

(i) In respect of loss of life or personal injury, either alone or together, with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding £15 for each ton of their ship's tonnage, and

(ii) In respect of loss of or damage to vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding £8 for each ton of their ship's tonnage.

Contrary to what might have been expected, it has been held that similar limitations of liability to that provided for in the Canadian act are not illegal under the Australian, New Zealand, and Harter Acts, and it is customary to insert such in all bills of lading.

(E) The Canadian, the Australian, and apparently the New Zealand legislation[1] on this subject applies only to ships carrying goods from those Dominions severally. The Harter Act applies to any vessel between ports of the United States and foreign ports; in other words, to bills of lading issued in countries other than the United States of America.

(F) The Canadian act applies to all goods, "except live animals and lumber, deals, and other articles usually described as 'wood goods.'"

The Australian act, section 300, of the New Zealand act (i. e., the main provision only), and sections 1 and 4 of the Harter Act (i. e., the provisions as to

[1] Section 293 of the shipping and seamen act refers to any ship transporting merchandise or property to or from any port in New Zealand, but section 9 of the 1911 act, which relates to jurisdiction, refers only to any bill of lading or other document relating to the carriage of goods from any place in New Zealand.

liability in respect of the proper loading, stowage, custody, care, and delivery of goods, and as to issuing a bill of lading only) do not apply to live animals, but otherwise the legislation is of perfectly general application.

(G) Section 9 of the Canadian act requires the issue on demand of a bill of lading describing the goods and their apparent order and condition, and section 5 requires that every bill of lading shall contain a clause to the effect that the shipment is subject to the act, and specifically forbids any stipulation or agreement purporting to oust the jurisdiction "of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document."

Section 6 of the Australian act and section 9 of the New Zealand shipping and seamen amendment act, 1911, are similar in effect to section 5 of the Canadian act.

Section 4 of the Harter Act is similar to section 9 of the Canadian act.

(H) Section 12 of the Canadian act provides for penalties (a fine of not exceeding $1,000, with cost of prosecution) for breaches of its provisions, and that the ship concerned may be libeled in this connection in any admiralty district in Canada.

Section 7 of the Australian act similarly imposes a penalty of £100.

The New Zealand acts do not contain any penalty clause.

Section 5 of the Harter Act also provides for penalties, a fine not exceeding $2,000, and that the vessel may be libeled for the amount of the fine and costs.

The above are the essential provisions of the Canadian water carriage of goods act and of the other similar acts. There are certain other provisions, which it will suffice to mention, viz:

(*a*) Section 11 provides that when a ship arrives at a port where goods are to be delivered, the owner, charterer, master, or agent shall forthwith give to the consignees such notice as is customary at the port of the ship's arrival.

(*b*) Sections 13 and 14 deal with the shipment of dangerous goods. The former imposes a penalty on persons shipping goods of an inflammable, explosive, or dangerous nature without previously obtaining the written permission of the agent, master, or person in charge of the ship, and the latter provides that if such goods are shipped without such permission they may be destroyed or rendered innocuous, without compensation to the owner, shipper, or consignee, the shipper to be liable for all damages arising directly or indirectly out of the shipment.

No similar enactments occur in the Australian or Harter acts, but the New Zealand act contains a provision, section 302 (2), to the effect that notice of any claim for short delivery or pillage of cargo must be made to the agents in New Zealand of any ship not registered in New Zealand not later than 14 days after the delivery of the cargo in respect of which the claim is made. The first part of that section makes those agents responsible, with provision that in the event of their declining to accept the responsibility the master and another approved person shall enter into a bond before the ship is allowed clearance.

Sections 446–450 of the merchant shipping act, 1894, deals with the shipment of dangerous goods, and include provisions similar to those of the Canadian act.

[Appendix III.]

Minute of Proceedings of a Meeting, Held at the Offices of the Board of Trade on Friday, December 10, 1920, Between Representatives of the Rubber Growers' Association, of Certain Shipping Lines in the Far Eastern Trade, and of the Eastern Exchange Banks in Regard to the Use of the Phrase, "Shipped or Received for Shipment," in Bills of Lading.

The following minute was agreed to by all the parties and signed by the chairman:

The imperial shipping committee was appointed inter alia to inquire into complaints from persons and bodies interested with regard to ocean freights, facilities, and conditions in the interimperial trade.

These proceedings are in respect of such a complaint from the Rubber Growers' Association, which was addressed to the committee in a letter from the association of July 27, 1920. The complaint was to the effect that certain

shipping companies had departed from the customary wording of bills of lading, which began "shipped" simply, by substituting such wording as "shipped or delivered for shipment," and they asked that the imperial shipping committee should take action to induce the shipping companies effected to revert to the single word "shipped."

The shipping lines concerned were originally the Glen & Shire, Ben & Bolt Lines, but it appeared that the complaint against the Ben Line had subsequently been dropped.

The meeting of December 10 had been arranged after correspondence between the imperial shipping committee and the Rubber Growers' Association, the shipping lines concerned, and also the National Bank of India, as representing the eastern exchange banks.

There were present: Sir Halford J. Mackinder, M. P.; Sir Edward Rosling, Mr. Norman W. Grieve, Mr. Frank Smith, of the Rubber Growers' Association; Mr. Richard D. Holt, of Messrs. A. Holt & Co.; Mr. E. E. Hills, of Messrs. The Glen Line (Ltd.), and the Shire Line; Mr. J. Y. Munro, of the National Bank of India; Mr. E. J. Elliot, secretary to the imperial shipping committee.

The complaint of the Rubber Growers' Association, as put forward by Sir Edward Rosling at the meeting, was to the effect that the bill of lading, issued by Messrs. Alfred Holt & Co. and the Glen and Shire Lines for the homeward trade in rubber, was printed with the phrase "shipped or received for shipment," but this was a departure from the old and customary form of the bill of lading, which created certain difficulties in connection with subsequent dealing with the rubber shipments in question. He asked that, as the normal printed form of the bill of lading for the trade, these shipping companies should restore the bill of lading containing only the word "shipped," instead of the phrase mentioned above. The attitude of the eastern exchange banks was that they could not regard a "received for shipment" bill of lading as an effective instrument for their purposes; they must have a definite certificate of shipment, which the ordinary form of bill of lading gives, and Mr. Munro stated that these banks had recently determined among themselves, in Shanghai, that the "received for shipment" bill of lading should not be accepted at all.

Mr. Holt pointed out that his shipping company were always prepared to give a "shipped" bill of lading where the goods had actually been shipped, and all parties agreed that in no circumstances should a "shipped" bill of lading be given before shipment had actually taken place. Mr. Holt said that the "received for shipment" form had been introduced to suit the convenience of the majority of the shipping companies' customers in the trade, and that he thought the traders would experience considerable inconvenience if they used only a "shipped" bill of lading, which could not be issued until later than the other form, and might in many cases arrive in this country after the goods in question, thus causing inconvenience and delay.

Mr. Holt, however, stated that he would forthwith give instructions for the preparation and issue of two different forms of bill of lading for use in the trade in question, one of which should contain the word "shipped" alone, printed in black ink, and the other the phrase "shipped or delivered for shipment," printed in red ink, to make the form readily distinguishable from the other. These forms would be for homeward business only, and by means of the choice thus offered to shippers, it would be possible for them and the banks to determine which should be the form most generally used. The representatives of the Rubber Growers' Association and Mr. Munro, on behalf of the eastern exchange banks, were understood to accept this arrangement as affording the means of a settlement of the difficulty. These interests would issue to their members or agents notice of these arrangements, advising that the "shipped" bill of lading should be alone called for.

Mr. Hills acquiesced in this arrangement on behalf of Messrs. The Glen Line and the Shire Line.

Mr. Munro undertook to put it before the eastern exchange banks that they should do their best, so far as lay within their power and knowledge, to discourage any improper premature issue of "shipped" bills of lading, i. e., before the goods had actually been shipped. It was made clear in this connection that there was no suggestion that the banks had in any way countenanced this practice in the past.

Appendix II.

PILFERAGE—INTERIM REPORT OF COMMITTEE APPOINTED BY THE COUNCIL OF THE CHAMBER OF SHIPPING OF THE UNITED KINGDOM.

The committee which was appointed by the council for the purpose of investigation of the question of pilferage has conducted an extensive inquiry, and is now in a position to submit an interim report.

The evil of pilferage has reached very grave dimensions, and the following instances will show that strong action is necessary if the growing practice is to be counteracted.

One company estimated, when this question first came into prominence, that upon each round voyage of two cargoes made in a wide variety of trades the shortage claims—believed to be due almost wholly to pilferage and theft—averaged £2,500 per voyage.

A second company with less varied trade estimated that every cargo out and home costs an average of £1,000 in claims paid, say £2,000 for the round voyage.

A third company produced statistics showing that whereas before the war claims averaged 1.44d. per ton of cargo handled, they recently averaged 26.91d. per ton of cargo handled, an increase of nearly 2,000 per cent, and they are still increasing.

A fourth instance gives statistics of an outward trade served by some seven or eight steamship companies in which the average for the first nine months of last year was 3s. per ton of cargo handled.

The committee feels that a very great deal can be done by the shipowners themselves to eradicate the evil for the period during which the goods are in their charge, and it is thought that the pivot of the situation is the system of tallies and watching. Instances were quoted to the committee of the claims paid by seven separate companies all running in the same trade with the same agents where the average cost per ton of cargo varied from 1s. 9d. to 5s. 2d., and there was substantial evidence that this notable divergence in the figures by different steamers was in the main due to varying practices on board in the matter of tallying and watching.

The question of tallies and watching has, therefore, received special attention and the committee wishes to submit the following recommendations:

1. That tallies should be taken both in and out of the ship. It is specially important that this should be done when discharging (*a*) into open quays or (*b*) into lighters, and it is also of the first importance when discharging on to the quays of dock and warehouse authorities.

Frequently the dock authorities discourage tallies on discharge. This is natural and understandable, since the responsibility for the safe custody of goods between discharge from the ship and delivery to the consignees on the quay or warehouse rests with them. During that time goods are often lost. If a tally has not been kept on the ship it is impossible to prove delivery to the dock authority and claims for goods so lost are passed on to the ship and the shipowners are powerless to repudiate them.

The dock companies urge that tallies involve delay to the ship. The committee is of opinion, however, that there need rarely be any material delay, and further, that shortage claims are now so grave that the gain from tallying would in general outweigh rare cases where actual loss might arise from delay.

Further, the committee considers that even where shipping companies use their own wharves it is desirable that careful tallies should be kept.

Where proper tallies are not kept it is impossible as a rule for the shipowner, or even those in charge of the warehouse, to know whether a loss has arisen in the warehouse or not, the goods being tallied only on delivery from the warehouse. A shortage may have arisen in the warehouse, on the ship, or even before the ship loaded. Tallies at the rail would, therefore, assist those in charge of the wharf, the master, and the shipowners to trace any losses, and the responsibilities of the ships' officers on the one hand and of the wharf officials on the other would be defined.

2. That in all cases when holds are open, whether loading or discharging. (*a*) there should be efficient control and supervision by the officers of the ship, and (*b*) where officers can not be present at all holds they should appoint their own substitutes from among the petty officers, apprentices, wireless operators (vide infra) and other members of the crew. It is not proposed that officers

should be required to take the tallies themselves where it is not customary, but the committee desires to emphasize the ultimate responsibility of the officers

With reference to (*a*) the committee wishes strongly to urge that the supervision, if not the actual tallying, is the province of the officers' responsibility. In small ships the tally is conveniently taken by the officers; in large ships the superintendence of the tally is a matter for the officers whilst the tally clerks do the work. Where tallying is now customarily done by tally clerks or others it is not desirable to revert to the practice of requiring the officers actually to do the tallying, but they must take responsibility for it as effectively as for the safe navigation of the ship, and officers should be made to feel that good or bad outturns will weigh with owners in considering promotion as well as good or bad navigation.

With reference to (*b*) in home ports, where it is a common practice to allow officers to be away on leave, care should be taken that a sufficient number of officers are left to perform cargo duties and that the duties of those absent are devolved upon officers remaining or substitutes. They strongly recommend that the practice of supplying relieving officers should be extended.

The committee also recommend that the wireless operators and watchers should be employed in addition to the officers in connection with the work of tallying, supervising, and watching, and it is desirable that they should eventually be regarded as an integral part of the ship's personnel for performing cargo duties in port under the supervision of the master.

The committee wish to make the following recommendations concerning pilferage reports to owners:

1. That prompt reports should be sent direct to the owners at the time when the pilferage is discovered.

2. That the reports should divide the claims, showing specifically which claims arise from pilferage.

The committee wish to point out that "special goods" unless they are under bars and keys invite the attention of pilferers.

In regard to legal, magisterial, and police action the committee wish to recommend that—

(1) Shipowners should prosecute every detected case of pilferage. There is a certain chariness about instituting legal proceedings, but such proceedings are imperative if pilferage is to be stopped.

(2) The magistrates should be urged to set their faces against merely inflicting fines, often paid out of subscriptions by the offender's associates. Fines are generally inadequate, and they should award imprisonment to persons convicted of larceny.

(3) The magistrates' powers of dealing with persons convicted of unlawful possession should be enlarged and the maximum fine should be increased from £5 to £20.

(4) Further, the river and dock police forces should be strengthened and encouraged in vigilance.

The commitee wish to make the following recommendations in regard to dock and harbor authorities:

(1) That the authorities should be more strict in the scrutiny of persons allowed to enter and leave dock and harbor premises.

(2) That a system of triplicate passes should be adopted in all ports for goods taken out of docks (called "goods passes"), one to be retained in the pass book of ship and two to be handed to the person in charge of the goods to be given up at the dock gates. The dock authority should retain one of these two for their purposes and send the other to the ship's agent.

(3) That there shoud be stricter examination of conveyances by road and water (carts, lighters, etc.) by those who are charged with the duty of doing so.

(4) That where received by the dock or harbor authorities they should always give receipts for goods which are tallied by the ship at the ship's rail.

The committee wishes to recommend that the cooperation of the labor unions should be sought in encouraging a strong and healthy public opinion on the moral aspect of the evil, and it should be brought home to employers and employed that it is a stigma on the great body of those engaged in trade that the nefarious practices of pilferage and theft should have such great vogue to-day.

In conclusion, the committee wish to emphasize the paramount importance for ships' officers of cargo duties under present-day conditions over all other duties in port. They believe from experience already acquired that if generally adopted their recommendations will speedily reduce the pilferage evil to small dimensions as affecting steamship owners, and they look forward to a time in

the near future when less strict practices will be necessary by reason of the improved public sentiment on this subject. The quicker the action taken the quicker and more complete the result achieved.

L. C. Harris, chairman of committee, Ellerman & Bucknall Steamship Co. (Ltd.); E. F. Abbott, Union-Castle Mail Steamship Co. (Ltd.); W. G. Inglis, Anderson, Green & Co. (Ltd.); H. R. Miller, United Kingdom Mutual Steamship Assurance Association; G. H. Noakes, New Zealand Shipping Co. (Ltd.); A. Woods, Lamport & Holt (Ltd.); C. Dance, Atlantic Transport Co. (Ltd.); H. M. Cleminson, general manager Chamber of Shipping of the United Kingdom; C. V. S. Potts, secretary of committee.

28 St. Mary Axe, London, E. C. 3.

25 March, 1921.

SECOND INTERIM REPORT OF THE CHAMBER OF SHIPPING PILFERAGE COMMITTEE.

The following are some of the matters which have been considered by the committee since their last report:

The committee recommend that the custom of issuing bills of lading for goods "Received for shipment" except where the circumstances make no other form appropriate, should be discouraged; as it gives scope for pilferage, and in no case should shipowners, under whatsoever pressure from merchants, issue a "shipped" bill of lading until the goods are on board the steamer, as the difficulties of protecting the steamer against claims for pilferage which may have happened before shipment are thereby greatly increased.

The committee have had many interviews with the representatives of the London lighterage trade and have come to an agreement with them by which the present London lighterage clause is to be amended in a manner which has been accepted as satisfactory by the London Chamber of Commerce as well as by your committee. The lightermen agree to accept responsibility for pilferage and theft of goods while in their care up to a limited amount.

The adoption of the new lighterage clause is in suspense until the bill before Parliament is passed which the lightermen are promoting for limiting their liability in respect of life and property on the lines of the merchant shipping act.

The committee are following the results of the London police scheme. This is very effective where adopted, but owing to lack of support the scheme is about to be withdrawn from certain docks in London which are chiefly used by lines not controlled in London. It is understood, however, that the police authorities are seriously considering the extension of the London special dock police scheme to the whole of the river, which the head of the dock police has stated could be done at a cost of about £50,000 per annum with 200 additional men.

Schemes on a basis very similar to that which has been in force in London for the last 12 months are being inaugurated in several of the Australian States on the basis of a levy on the steamers of from 1½d. to 2d. per ton of cargo handled, and it is very satisfactory to find that the labor unions as a rule are not averse to these means of purging their membership of the less desirable characters and of maintaining the reputation of workingmen for common honesty.

Your committee have been referred to on one or two occasions for assistance in dealing with special problems at foreign ports coming within the scope of their reference, and in one particular matter they have deemed it expedient to invoke the cooperation of the seamen's union, as the interests of the seamen, as well as of shipowners, were very specially involved. In another instance a group of owners in a particular trade invoked the assistance of the chamber to deal with a system amounting to nothing less than armed robbery which prevailed at a Mediterranean port, and steps are in hand which are expected to bring about a remedy.

Your committee desire to bring to the notice of shipowners this department which is responsible to the foreign office and the board of trade for commercial matters in the hands of British Government representatives abroad. Each British ambassador and master has on his staff a commercial secretary, who is responsible for coordinating the work of the consuls. Some of the commercial

secretaries during their leave in this country have visited the chamber. They appear to have been excellently well chosen for their combined knowledge of British commercial matters and the conditions of the country to which they are accredited, and in the committee's view shipowners would be well advised to keep in touch with these gentlemen. Your committee have already received valuable assistance from these officials in several countries in connection with pilferage matters.

Owing to the difficulty during the war of shippers obtaining materials of prewar quality for packing their goods, and also owing to the need of better packing to prevent the increased pilferage, the question of what is adequate packing has been much discussed of late.

Facts have been brought to the knowledge of the committee showing that where the steamship line has dictated the exact method of package for goods, some shippers have evaded the regulation by complying with it in the letter, but not in the spirit, such as by putting a double gunny of less thickness than the single original one.

As a general principle the committee deprecate the adoption of any formula by shipowners defining what will be accepted as satisfactory packing for various goods. A shipowner not having knowledge of the contents can not definitely state that the packing is satisfactory, and the specification of what is adequate packing is a matter for the shipper of the goods. Shipowners, therefore, should reserve their right to reject goods appearing to be insufficiently packed, and also their right to plead insufficiency of packing. The merchants recognize this principle, and the London Chamber of Commerce have conducted some very interesting experiments revealing the qualities required in a packing case to stand the wear and tear of ocean transit and to hamper expert thieves.

In investigating this matter of pilferage, the attention of the committee has been drawn to the practice in some services of clausing mates' receipts somewhat indiscriminately with the words such as "more or less frail."

The actual condition of the goods should at all times be accurately noted in detail, and the practice which many shippers desire of the shipowner accepting indemnities in lieu of clausing bills of lading in accordance with the facts, should be discouraged to the utmost.

The committee have very carefully considered with expert assistance a number of devices to make pilferage on board ship more difficult, and they are preparing a schedule containing some suggestions of this character which may be useful to shipowners.

Owners might well take the present opportunity to overhaul their standing instructions to masters and officers in respect to the care of cargo, with the object of bringing them up to date on this subject.

There remains but one important matter for your committee to deal with before they make their final report. The information which has been brought together has shown that at many ports of the world practices are growing up which raise difficulties in the way of making accurate and good deliveries ex ship. In particular there is great difficulty at many ports in obtaining for the ships' officers a satisfactory account of the condition in which the goods are delivered out of their steamers, owing to the practice with many harbor authorities of intervening between the steamship and the consignee and taking the goods into shed or warehouse without any receipt or tally being taken or given until the goods are eventually delivered out of the shed to the consignee, which usually takes place some time after the steamer has left the port. The committee are collating exact information, with a view to seeing whether the chamber can take or promote any action to get a better state of affairs. The experience already gained in a few cases indicates that important results for the benefit of shipping may be achieved in this connection, which should permanently assure the prospect of satisfactory outturns of cargo. Meantime, they would call the attention of shipowners to the fact that a tally ex ship is sufficient evidence of the discharge of the cargo, even though the receiving authority refuses to attend the tally: and as it is a customary stipulation in the bill of lading as well as the general rule of common law that the shipowner's responsibility is to cease upon the goods leaving the ship, such a tally should be taken and claims settled in accordance with its finding, and not in accordance with the later finding after much pilferage may have happened while the goods are in the hands of dock authorities or others.

The general proposition underlying our recommendations is the responsibility of the deck officers for the proper reception, carriage, and delivery ex ship of their cargoes in good condition, and of the shipowners for giving every facility to the officers to perform these duties.

L. C. Harris, chairman of committee, Ellerman & Bucknall Steamship Co. (Ltd.); E. F. Abbott, Union-Castle Mail Steamship Co. (Ltd.); C. Dance, Atlantic Transport Co. (Ltd.); W. G. Inglis, Anderson, Green & Co. (Ltd.); H. R. Miller, United Kingdom Mutual Steamship Assurance Association; G. H. Noakes, New eZaland Shipping Co. (Ltd.); A. Woods, Lamport & Holt (Ltd.); H. M. Cleminson, general manager Chamber of Shipping of the United Kingdom; C. V. S. Potts, secretary of committee.

28, St. Mary Axe, London, E.C.3,
30th June, 1921.

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